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ABSTRACT

This report examines the current status of minority voting rights covered by the special provisions of the Voting Rights Act of 1965. The special provisions prescribe added protection of minority voting rights in those jurisdictions where discrimination in voting has been most pervasive. The report explains the Voting Rights Act and discusses its effects in enabling minorities to register/vote and in increasing the number of minority elected officials; examines whether minorities continue to experience problems in registering and in voting; analyzes the difficulties of minority candidates and minority voters in achieving fair representation; discusses the Department of Justice's objections to proposed changes in voting procedures; examines instances of noncompliance with the act in the jurisdictions that the act covers; analyzes the effectiveness of the minority language provisons (such as the requirement to print voting materials in minority languages) in increasing minority participation in the electoral process; and presents findings and recommendations. The report indicates that while the number of minorities elected to public office and the number of registered minorities have increased, problems in registration, voting, fair representation, and noncompliance continue to exist. Additional background and status information on the Voting Rights Act are provided by tables and appendices. (Author/MJL)

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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, handicap, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;
- Submit reports, findings, and recommendations to the President and the Congress.

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LETTER OF TRANSMITTAL

THE U.S. COMMISSION ON CIVIL RIGHTS
Washington, D.C.
September 1981

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Sirs:

The U.S. Commission on Civil Rights presents this report to you pursuant to Public Law 85-315, as amended.

This document presents the Commission's evaluation of the current status of minority voting rights in jurisdictions covered by the special provisions of the Voting Rights Act of 1965, as amended. The information contained in this report was obtained by the Commission from staff interviews, court decisions, U.S. Department of Justice objection letters, and individual complainants.

Despite increased political participation by minorities in many jurisdictions covered by the special provisions of the Voting Rights Act, minorities continue to face a variety of problems which the act was designed to overcome. This report documents resistance and hostility on the part of many citizens to increased minority participation in virtually every aspect of the electoral process. It also documents the resistance of numerous local jurisdictions to following either the letter or spirit of the preclearance provisions of the Voting Rights Act. We, therefore, conclude that the special protections of the Voting Rights Act, as amended, should be extended for an additional 10 years.

We urge your consideration of the facts presented and the Commission's recommendations for corrective action.

Respectfully,

Arthur S. Flemming, *Chairman*
Mary F. Berry, *Vice Chairman*
Stephen Horn
Blandina Cardenas Ramirez
Jill S. Ruckelshaus
Murray Saltzman

John Hope III, *Acting Staff Director*

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The report was prepared under the overall supervision of Caroline Davis Gleiter, Assistant Staff Director, Office of Program and Policy Review.

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Chapter 1

Introduction

The right to vote is central to full political participation of all citizens of this Nation. It grants to all citizens the power to elect those persons who make decisions affecting their lives. Although it is a precious right, it has not been exercised freely by minority citizens, due to continued efforts of State and local officials and private citizens to deny them that right. In January 1960, in his annual message to the Congress on the state of the Union, President Dwight D. Eisenhower said:

> In all our hopes and plans for a better world we all recognize that provincial and racial prejudices must be combatted. In the long perspective of history, the right to vote has been one of the strongest pillars of a free society. Our first duty is to protect this right against all encroachment. In spite of constitutional guarantees, and notwithstanding much progress of recent years, bias still deprives some persons in the country of equal protection of the laws.[1]

The 15th amendment prohibits the denial of voting rights on the basis of race, color, or previous condition of servitude.[2] Congress was given the power to enforce this amendment through appropriate legislation,[3] and such legislation was passed in 1870, 1957, 1960, and 1964.[4] Nevertheless, pervasive racial discrimination continued to thwart the guarantees of the 15th amendment. Numerous practices were used to deny minority citizens the right to vote, including physical intimidation and harassment, the use of literacy tests, the poll tax, English-only elections, and racial gerrymandering.[5] The results of these practices were low registration and voter turnout among minorities when compared with whites and the absence of a significant number of minority elected officials. In many areas, minorities were almost totally excluded from the political process.[6]

The Voting Rights Act of 1965[7] is the culmination of numerous efforts to create an effective remedy for discriminatory voting practices. The act as amended is intended to prevent government officials and private citizens from interfering with the right of minority citizens to register and to vote. It contains permanent provisions and special provisions. The permanent provisions of the act protect the voting rights of minorities throughout the Nation. The special provisions[8] offer added protections to minorities in those jurisdictions where discrimination in voting has been the most blatant and pervasive. This report focuses on the special provisions.[9]

One of the mandates of the U.S. Commission on Civil Rights is to investigate complaints alleging

[1] *Public Papers of the Presidents of the United States: Dwight D. Eisenhower,* Jan. 1, 1960 to Jan. 20, 1961, p. 14.

[2] U.S. Const. amend. XV, §1.

[3] *Id.* §2.

[4] Act of May 31, 1870, ch. 114, 16 Stat. 140; Civil Rights Act of 1957, Pub. L. No. 85-315, §131, 71 Stat. 637; Civil Rights Act of 1960, Pub. L. No. 86-449, §601, 74 Stat. 90; Civil Rights Act of 1964, Pub. L. No. 88-352, §101, 78 Stat. 241. The current version of these acts is codified at 42 U.S.C. §1971 (1976).

[5] *See,* U.S., Commission on Civil Rights: *Report of the U.S. Commission on Civil Rights, 1959; 1961 U.S. Commission on Civil Rights Report,* Book 1: *Voting; Report of the U.S. Commission on Civil Rights, 1963; Freedom to the Free* (1963); *Voting in Mississippi* (1965); *The Voting Rights Act. . .The First Months* (1965); *Political Participation* (1968); and *The Voting Rights Act: Ten Years After* (1975).

[6] *See, e.g.:* U.S., Commission on Civil Rights: *Report of the U.S. Commission on Civil Rights, 1959; Statutory Reports 1961,* Book 1: *Voting; Civil Rights '63,* "Voting" (1963); *Voting in Mississippi* (1965); *Political Participation* (1968).

[7] Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified at 42 U.S.C. §§1971, 1973 to 1973bb-1 (1976)).

[8] §§4-9 of the Voting Rights Act, currently codified at 42 U.S.C. §§1973b-1973g (1976).

[9] For a full discussion of the special provisions, see chapter 2.

denial of the right to vote by reason of race, color, religion, age, sex, handicap, or national origin.[10] To help secure full and meaningful enfranchisement of minorities, the Commission has responded to congressional requests for testimony,[11] held hearings,[12] and issued reports[13] on voting rights problems. After a comprehensive study in 1975 the Commission reported to the Congress on progress under the Voting Rights Act during hearings on extension of the act.[14] The Commission found that minorities had made substantial progress in entering the political system compared to almost total exclusion in 1965, but also found that persistent and serious obstacles remained.[15]

The present report assesses whether discrimination continues to exist in jurisdictions covered by the original special provisions of the Voting Rights Act, under consideration for extension in 1982.[16] These special provisions require jurisdictions to preclear with the United States Department of Justice or the U.S. District Court for the District of Columbia any proposed changes in voting practices or procedures prior to implementing them. Jurisdictions must prove that such changes are not discriminatory in purpose or effect.[17] In addition, this report assesses whether discrimination continues to exist in jurisdictions made subject to preclearance by the 1975 amendments to the Voting Rights Act. These provisions are due for extension in 1985.[18]

For jurisdictions subject to the preclearance provisions, first, Commission staff examined court cases on voting between 1975 and 1980. Second, letters from the Department of Justice to covered jurisdictions, objecting to proposed changes in voting procedures that jurisdictions sought to implement, were examined. Third, major civil rights organizations were asked whether they knew of instances of possible or actual denial of voting rights.[19] Fourth, the Commission's regional offices and State Advisory Committees provided information on reported voting problems and made site visits to polling places in their areas.

To determine how extensive and serious these voting rights problems were, Commission staff undertook an indepth examination of jurisdictions subject to the preclearance provisions of the Voting Rights Act.[20] Jurisdictions considered for indepth analysis met the following criteria:

(a) The jurisdiction had a total minority population of 20 percent or more;[21]

(b) The percentage of minority elected officials was less than the percentage of minorities in the population;

(c) The jurisdiction had more than one reported voting problem; and

(d) Sufficient information could be obtained to analyze the nature and extent of the alleged problems.

[10] 42 U.S.C. §1975c(a)(1) (Supp. III 1979).

[11] *See, e.g.:* U.S., Congress, House, Subcommittee No. 5 of the Committee on the Judiciary, *Voting Rights: Hearings on H.R. 6400,* 89th Cong., 1st sess., 1965, pp. 123–311; U.S., Congress, Senate, Subcommittee on Constitutional Rights of the Committee on the Judiciary, *Amendments to the Voting Rights Act of 1965: Hearings on S.818, S.2456, S.2507, and Title IV of S.2029,* 91st Cong., 1st and 2nd sess., 1969 and 1970, pp. 28–87, 396–431, 661–62; U.S., Congress, House, Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, *Extension of the Voting Rights Act: Hearing on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501,* 94th Cong., 1st sess., 1975, pp. 17–60; U.S., Congress, Senate, Subcommittee on Constitutional Rights of the Committee on the Judiciary, *Extension of the Voting Rights Act of 1965: Hearings on S.407, S.903, S.1297, S.1409, and S.1443.*

[12] U.S., Commission on Civil Rights, *Hearing,* Montgomery, Ala., Dec. 8–9, 1958, and Jan. 9, 1959; U.S., Commission on Civil Rights, *Hearing,* Los Angeles, Jan. 25–26, 1960; U.S., Commission on Civil Rights, *Hearing,* San Francisco, Jan. 27–28, 1960; U.S., Commission on Civil Rights, *Hearing,* New Orleans, Sept. 27–28, 1960, and May 5–6, 1961; U.S., Commission on Civil Rights, *Hearing,* Jackson, Miss., Jan. 16–20, 1965.

[13] *See, e.g.,* U.S., Commission on Civil Rights: *Political Participation* (1968); and *The Voting Rights Act: Ten Years After* (1975).

[14] U.S., Congress, House, Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, *Extension of the Voting Rights Act: Hearings on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501,* 94th Cong., 1st sess., 1975, pp. 17–60; U.S., Congress, Senate, Subcommittee on Constitutional Rights of the Committee on the Judiciary, *Extension of the Voting Rights Act of 1965: Hearings on S.407, S.903, S.1297, S.1409, and S.1443.*

[15] For a full discussion of the types of problems that remained in 1975, see U.S., Commission on Civil Rights, *The Voting Rights Act: Ten Years After* (1975).

[16] See appendix B, table B.1, for a list of jurisdictions covered by the original special provisions of the Voting Rights Act.

[17] Under the special provisions, jurisdictions may also be designated for Federal examiners and observers. For a full discussion of the duties of Federal examiners and observers, see chapter 2.

[18] See appendix B, table B.3, for a list of jurisdictions covered by the 1975 amendments to the Voting Rights Act. 42 U.S.C. §1973b(a) provides a mechanism whereby jurisdictions covered by the special provisions of the act may achieve exemption from coverage ("bailout"). Jurisdictions covered in 1965 may seek bailout in 1982. These provisions may be extended in 1982 to require coverage for an additional number of years. Jurisdictions covered by the 1970 amendments may seek to bail out in 1987 while those covered by the 1975 amendments are required to be covered a minimum of 10 years under the act before bailout is possible. These provisions would have to be extended in 1985 if coverage were to be required for an additional number of years.

[19] The organizations contacted were: Lawyers' Committee for Civil Rights Under Law, the Voter Education Project, the Mexican American Legal Defense and Educational Fund, the American Civil Liberties Union, the NAACP Legal Defense and Educational Fund, Inc., the NAACP, the Southern Poverty Law Center, and the Southwest Voter Registration Education Project.

[20] Due to limited resources, the Commission was unable to undertake an examination of possible voting problems throughout the Nation as a whole. The study was limited to jurisdictions covered by special provisons of the Voting Rights Act.

[21] The term "minorities" refers to blacks, Hispanics, Asian Americans, and American Indians.

The report also seeks to determine whether there has been effective enforcement of the minority language provisions of the Voting Rights Act.[22] Jurisdictions subject to these provisions are required to print materials related to registration and voting in the applicable minority language as well as English and to provide oral assistance in registration and voting, if needed.[23]

The Commission interviewed over 150 individuals who are knowledgeable about the voting problems that exist in the minority communities within the jurisdictions studied. These persons included minority elected officials, former candidates for national, State, and local government positions, attorneys, religious and community leaders, representatives of local and national civil rights organizations, participants in registration and voting drives at the local level, and State and local election officials. In addition, Commission staff analyzed alleged voting problems in depth in 70 jurisdictions subject to the preclearance and/or the minority language provisions in Alabama, Arizona, California, Colorado, Georgia, Louisiana, Mississippi, New Mexico, New York, North Carolina, Oklahoma, South Carolina, South Dakota, Texas, and Virginia. Field visits were made to 32 of these jurisdictions. Alleged voting problems in the remaining 38 jurisdictions were analyzed with information obtained from the Department of Justice and civil rights organizations. This information includes court decisions, Department of Justice objection letters,[24] complaints filed with the Department of Justice, and Commission regional office and State Advisory Committee reports. The report that follows presents the results of this analysis.[25] (Appendix A lists the jurisdictions discussed in the report.)

Chapter 2 of this report explains the Voting Rights Act and discusses the effects the act has had in enabling minorities to register and vote and in increasing the number of minority elected officials. Chapter 3 explores the issue of whether minorities continue to experience problems in registering to vote. Chapter 4 considers whether problems in voting continue. Chapter 5 presents an analysis of the difficulties minority voters and minority candidates are experiencing in achieving fair representation. Chapter 6 presents an analysis of Department of Justice objections to proposed changes in voting practices and procedures and of noncompliance with the Voting Rights Act by covered jurisdictions. Chapter 7 analyzes the effectiveness of the minority language provisions in increasing the political participation of language minorities in the political process. Finally, chapter 8 presents findings and recommendations.

In addition, there are seven appendices to the report which contain relevant background information. For example, appendix G includes responses to statements made in the report pursuant to section 102(e) of the Commission's statute and section 702.18 of its rules and regulations. According to the statute, "If a report of the Commission tends to defame, degrade or incriminate any person, then the report shall be delivered to such person thirty days before the report shall be made public in order that such person may make a timely answer to the report."[26]

In fulfilling this requirement the Commission identified 58 local registration and election officials as well as various officials holding elective office in 38 jurisdictions discussed in the report. Letters were sent to these officials containing pertinent sections of the report and requesting a verified answer. Thirty-five verified responses concerning 28 jurisdictions were received and appear in appendix G. These verified responses were taken into consideration in preparing the report in its final form. In some cases, the draft was modified on the basis of the Commission's analysis of the facts contained in the verified answers. In other cases, a response to the answer was prepared, and it also appears in appendix G, immediately following the verified answer.

[22] 42 U.S.C. §§1973b(b), (f)(1)–(4), 1973aa–1a(a)–(e) (1976).
[23] *Id.* §1973b(f)(4), §1973aa–1a(c).
[24] See chapter 6 for a discussion of Department of Justice objection letters.
[25] Due to limited resources, the Commission was unable to undertake a systematic examination of the effectiveness of the Department of Justice in enforcing the Voting Rights Act.
[26] 42 U.S.C. 1975–1975e, §102(e). For the complete Commission statute and regulation relating to defame and degrade, see appendix F of the report.

Chapter 2

The Voting Rights Act and Its Effects

The Voting Rights Act[1] was enacted on August 7, 1965, and was amended in 1970 and 1975. The act contains general provisions that are permanent and affect the entire Nation; it also has special provisions that are temporary and only affect jurisdictions that meet certain criteria specified in the act.

General Provisions

The general provisions of the act protect the voting rights of Americans in several important ways. These provisions prohibit voting qualifications or procedures that would deny or abridge a person's right to vote because of race, color, or inclusion in a minority language group.[2] The general provisions also make it a crime for a public official to refuse to allow a qualified person to vote or for any person to use threats or intimidation to prevent someone from voting or helping another to vote.[3]

Another general provision is section 202, which abolishes durational residency requirements as a precondition to voting for President and Vice President.[4] Section 202 also establishes nationwide standards for absentee registration and balloting in Presidential elections. Under this section, States are required to allow qualified persons to apply to register to vote 30 days prior to a Presidential election and to allow qualified voters to vote absentee if they have applied for absentee ballots not later than 7 days prior to the Presidential election.[5] If a qualified voter moves to another State or jurisdiction within 30 days of a Presidential election (and, therefore, does not satisfy the 30-day registration requirement), the voter must be allowed to vote either in person or by absentee ballot at his or her former residence.[6]

The general provisions, furthermore, provide for increased enforcement of voting guarantees by private parties. Section 3 permits private parties, as well as the Attorney General of the United States, to file suit to enforce the voting guarantees of the 14th and 15th amendments.[7] Under the remedies of section 3, the court may authorize the appointment of Federal examiners and observers or may require preclearance in any jurisdiction in the United States, regardless of its coverage under the Voting Rights Act.[8] Private enforcement of voting rights is also aided by section 14, the general provision authorizing the payment of attorney's fees to prevailing parties in voting rights cases.[9]

Another permanent provision with nationwide application that has helped to remove obstacles to voting is section 201 of the act, prohibiting the use of tests or devices in voting.[10] This permanent ban on tests or devices refers to any requirement that

[1] Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437, as amended by Pub. L. No. 91-285, 84 Stat. 314, and Pub. L. No. 94-73, 89 Stat. 402 (codified at 42 U.S.C. §§1971, 1973 to 1973bb-1 (1976)).
[2] 42 U.S.C. §§1973, 1973b(f)(2) (1976).
[3] *Id.* §§1973i(a) and (b) (1976).
[4] *Id.* §1973aa-1(b).
[5] *Id.* §1973aa-1(d).
[6] *Id.* §1973aa-1(e).
[7] *Id.* §1973a(c).
[8] *Id.* §1973a(a) and (c).
[9] *Id.* §19731(e).
[10] *Id.* §1973aa(a).

persons, as a prerequisite to voting or registering, be required to:

(1) demonstrate the ability to read, write, or understand, or interpret any matter;

(2) demonstrate any educational achievement or. . .knowledge of any particular subject;

(3) possess good moral character; or

(4) prove [their] qualifications by the voucher of registered voters or member of any other class.[11]

Special Provisions

Additional voting protections are provided citizens in certain jurisdictions through application of the act's special provisions. The special provisions are found in sections 4 through 9 and section 203 of the act. Unlike the general provisions, which are permanent and apply nationwide, the special provisions are temporary and apply only in those jurisdictions that meet certain criteria.

Coverage Formula

A jurisdiction is "covered" or made subject to the act's special provisions if it meets one of the following tests found in section 4:

(1) The jurisdiction maintained on November 1, 1964, any test or device as a precondition for voting or registering, and less than 50 percent of its total voting age population were registered on November 1, 1964, or voted in the Presidential election of 1964.[12]

(2) The jurisdiction maintained on November 1, 1968, a test or device as a precondition for voting or registering, and less than 50 percent of its total voting age population were registered on November 1, 1968, or voted in the Presidential election of 1968.[13]

(3) The jurisdiction maintained on November 1, 1972 any test or device,[14] as a precondition to voting or registering, and less than 50 percent of its voting age population were registered on November 1, 1972, or voted in the Presidential election of 1972, *and* more than 5 percent of the citizens of voting age in the jurisdiction were members of a single language minority group.[15]

The coverage formula is not limited to one geographic region; jurisdictions throughout the Nation are covered. Jurisdictions covered by these provisions include the entire States of Alaska, Alabama, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia, and counties or towns in Connecticut, California, Colorado, Florida, Hawaii, Idaho, Massachusetts, Michigan, New Hampshire, New York, North Carolina, South Dakota, and Wyoming. Appendix B lists all jurisdictions covered by the Voting Rights Act.

The special provisions of the Voting Rights Act were enacted to provide protection against pervasive racial discrimination in registering, voting, and running for office. Prior to their enactment, State and local officials were able to effectively exclude minorities from political participation in many areas.[16] For example, some jurisdictions used "literacy tests" as a prerequisite to registration, which were manipulated in such a way that most blacks failed, but most whites passed.[17] Other jurisdictions required blacks, who attempted to register, to be accompanied by two persons already registered; since no blacks were already registered, whites had to be found, and none made themselves available.[18] In some areas discrimination was so pervasive blacks knew that any attempt to participate in elections was futile.[19] Although legislation had been passed prohibiting discrimination in voting,[20] minorities continued effectively to be excluded from the political

[11] *Id.* §1973aa(a)(b).
[12] *Id.* §1973b(b).
[13] *Id.*
[14] *Id.* §1973b(f)(3). This section was added by the 1975 amendments to the act and states that the term "test or device" shall also mean any practice or requirement by which a jurisdiction provided any registration or voting notices, forms, instructions, assistance, or other information relating to the electoral process, including ballots, only in the English language.
[15] 42 U.S.C. §1973b(b) (1976). When the Voting Rights Act was under consideration for extension in 1975, testimony was presented showing that minority language groups were victims of the same types of discriminatory practices used to prevent blacks from registering and voting. In addition, testimony revealed that the use of English-only election materials also prevented minority language groups from registering and voting. As a result of this testimony, a coverage formula was devised that would apply to those areas where discrimination against members of minority language groups was most blatant. *See,* U.S., Congress, House, Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, *Extension of the Voting Rights Act: Hearing on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501,* 94th Cong., 1st sess., 1975, pp. 398–486 (testimony of Dr. Charles Cotrell, professor of political science, St. Mary's University, San Antonio).
[16] U.S., Commission on Civil Rights, *Political Participation* (1968), pp. 6–7, (hereafter cited as *Political Participation).*
[17] Washington Research Project, *The Shameful Blight: The Survival of Racial Discrimination in Voting in the South* (Washington, D.C.: 1972), p. 1 (hereafter cited as *Shameful Blight);* U.S., Congress, Senate, Committee on the Judiciary, *Hearings on Voting Rights,* 89th Cong., 1st sess., 1965, S. Rept. 1564, pp. 9–11.
[18] Ibid.
[19] Ibid.
[20] Act of May 31, 1870, ch. 114, 16 Stat. 140; Civil Rights Act of 1957, Pub. L. No. 85–315, §131, 71 Stat. 637; Civil Rights Act of 1960, Pub. L. No. 86–449, §601, 74 Stat. 90; Civil Rights Act of 1964, Pub. L. No. 88–352, §101, 78 Stat. 241. The current version of these acts is codified at 42 U.S.C. §1971 (1976).

process in many jurisdictions. As a result, few minorities were registered,[21] and candidates and officeholders were able to ignore the needs and concerns of minority citizens.[22]

The special provisions of the Voting Rights Act were intended to overcome such blatantly discriminatory treatment. These provisions are limited to those jurisdictions that manifested a problem of pervasive, overt discrimination, through the use of tests or devices as a prerequisite to registering and voting, resulting in low minority registration and voting rates. In his 1965 testimony before the House Committee on the Judiciary during hearings on the Voting Rights Act, Attorney General Nicholas Katzenbach explained why these provisions were needed:

> Three times in the last decade—in 1956, in 1960, and in 1964—those who oppose stronger Federal legislation concerning the electoral process have asked Congress to be patient; and Congress has been patient. Three times since 1956 they have said that local officials, subject to judicial direction, will solve the voting problem. And each time Congress has left the problem largely to the courts and the local officials. Three times since 1956 they have told us that the prescription would provide the entire cure—this prescription aided by time—and Congress has followed that advice. . . .
>
> I will not burden this committee again with numerous examples of the use of tests and similar devices which measure only the race of an applicant for registration, not his literacy or anything else.
>
> And I need not describe at length how much time it takes to obtain judicial relief against discrimination, relief which so often proves inadequate. Even after the Department of Justice obtains a judicial decree, a recalcitrant registrar's ability to invent ways to evade the court's command is all too frequently more than equal to the court's capacity to police the State registration process.[23]

Attorney General Katzenbach stated that the coverage formula, which would apply to jurisdictions that used tests or devices and that had low registration rates or voter turnout, was not perfect, in that it would include areas that might not be using tests or devices in a discriminatory manner, and it could exclude areas that might be discriminating in other ways. He believed, however, that the coverage formula did affect most areas where voting discrimination was particularly flagrant:

> The tests and devices with which the bill deals include the usual literacy, understanding and interpretation tests that are easily susceptible to manipulation, as well as a variety of other repressive schemes. Experience demonstrates that the coincidence of such schemes and low electoral registration or participation is usually the result of racial discrimination in the administration of the election process.[24]

Exemption from Coverage

In order to exempt itself (bail out) from coverage under the special provisions, a jurisdiction must obtain a declaratory judgment in the U.S. District Court for the District of Columbia that it has not used a test or device with a discriminatory purpose or effect for a certain period of years prior to filing the action. Jurisdictions that maintained tests or devices as a precondition to voting or registering on November 1, 1964 (i.e., jurisdictions covered by the act in 1965), or November 1, 1968 (i.e., jurisdictions covered by the 1970 amendments), must prove that such tests or devices have not been used with a discriminatory purpose or effect for 17 years.[25] Jurisdictions covered in 1965 may seek to bail out in 1982, and those covered by the 1970 amendments may seek to bail out in 1987. Jurisdictions that maintained tests or devices in November 1972 (i.e., jurisdictions covered by the 1975 amendments) must prove that such tests or devices have not been used with a discriminatory purpose or effect for 10 years.[26] These jurisdictions may seek to bail out in 1985. Some jurisdictions have been able to prove that they have not used a test or device with a discriminatory purpose or effect prior to the end of the 17- or 10-year period and, thus, have been able to bail out.[27]

The bailout provision, which indicates the number of years required for jurisdictions to prove that they have not used a test or device with the purpose or effect of discriminating, has been extended twice, for 5 years in 1970 and 7 years in 1975. Extension of this provision means that jurisdictions included in the coverage formula will be subject to the preclearance provision of section 5 and can be designated for Federal examiners and observers.

Past extensions of the act were based on judgment by the Congress that denials of voting rights continued to exist in jurisdictions subject to preclearance. The issue of whether the 1975 extensions were justified was raised in a recent decision of the

[21] *Political Participation*, pp. 12-13.
[22] *Shameful Blight*, p. 1.
[23] U.S., Congress, Senate, Committee on the Judiciary, *Hearings on Voting Rights*, 89th Cong., 1st sess., 1965, S. Rept. 1564, pp. 8-9.
[24] *Id.* at 14.
[25] *Id.* §1973b(a).
[26] 42 U.S.C. §1973b(a) (1976).
[27] *Id.* Since January 1975 jurisdictions in three States have bailed out of the special provisions. They are: (1) the 18 municipalities in the State of Maine (Maine v. United States, No. 75-2125 (D.D.C. Nov. 25, 1975)); (2) Curry, McKinley, and Otero Counties, New Mexico (New Mexico v. United States, No. 76-0067 (D.D.C. July 30, 1976)); and (3) Choctaw and McCurtain Counties, Oklahoma (Oklahoma v. United States, No. 76-1250 (D.D.C. May 12, 1978)).

Supreme Court of the United States, *City of Rome v. United States.* [28] The city of Rome, Georgia, which was seeking to remove itself from coverage under section 5 of the act, argued that the special provisions of the Voting Rights Act had "outlived their usefulness by 1975, when Congress extended the act for another seven years."[29]

The Court rejected the city's argument, stating that the judgment of the Congress was based on evidence showing that minorities continued to be seriously underrepresented in most elective positions, that recent gains were only due to the act's preclearance requirement, and that the preclearance requirement prevented jurisdictions from devising new ways of discriminating against minority citizens.[30] The Court further stated:

> It must not be forgotten that in 1965, *95 years* after ratification of the Fifteenth Amendment extended the right to vote to all citizens regardless of race or color, Congress found that racial discrimination in voting was an "insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution."[31] In adopting the Voting Rights Act, Congress sought to remedy this century of obstruction by shifting "the advantage of time and inertia from the perpetrators of the evil to its victims."[32] Ten years later, Congress found that a seven-year extension of the Act was necessary to preserve the "limited and fragile" achievement of the Act and to promote further amelioration of voting discrimination. When viewed in this light, Congress' considered determination that at least another seven years of statutory remedies were necessary to counter the perpetuation of 95 years of pervasive voting discrimination is both unsurprising and unassailable. The extension of the Act, then, was plainly a constitutional method of enforcing the Fifteenth Amendment.[33]

The city of Rome also argued that it was a "political subdivision" that could seek to "bail out" despite the fact that the coverage formula included the entire State of Georgia. The formula for determining which jurisdictions are subject to the special provisions can include an entire State or a political subdivision within a State even though the entire State is not covered. Specifically, the coverage formula can include "any State or. . .any political subdivision of a State"[34] that meets the criteria described in the formula.

The Supreme Court of the United States stated that the issue is whether the city of Rome is defined as a State or a political subdivision under the act. The Court held that neither definition applied to the city since "the coverage formula. . .has never been applied to it."[35] Thus, the city could not seek to bail out independent of the State. The Court stated:

> . . .[T]he city comes within the act because it is part of a covered State. Under the plain language of the statute, then, it appears that any bailout action to exempt the city must be filed by, and seek to exempt all of, the State of Georgia.[36]

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[28] 446 U.S. 156 (1980). In 1966, the city of Rome, Georgia, made several changes in its method of electing members both to its city commission and board of education. Before 1966 the city had a nine-member city commission and a five-member board of education. Members of both bodies were elected at large by a plurality of the vote. Members of the city commission had to reside in one of nine wards even though they were to be elected on an at-large basis. There was no residency requirement for members of the board of education. In 1966 Rome's new city charter changed the method of electing members to the city commission by (1) decreasing the number of wards from nine to three; (2) providing for three numbered posts in each of the three new wards; (3) establishing a majority vote with a runoff requirement; and (4) providing for staggered terms for the three commissioners in the new wards. The city charter changed the method of electing members to the board of education by (1) increasing the size of the board from five to six members, (2) creating three wards with two numbered posts, (3) establishing a residency requirement and (4) providing for staggered terms. In addition to the changes in the method of electing members to the city commission and the board of education, the city made 60 annexations between Nov. 1, 1964, and Feb. 10, 1975.
None of the election changes made by the city of Rome was submitted to the Department of Justice for preclearance until 1974. When they were submitted, the Attorney General objected to the use of numbered posts, majority vote, and staggered terms for electing members to the city commission. It objected to these same voting rules and to the residency requirement for electing members of the board of education. In addition, the Attorney General objected to 13 of the 60 annexations made by the city. (The 13 annexations were subsequently precleared for school board elections, but not for city elections.) The Attorney General determined that the city had not met its burden of proving that the changes were not discriminatory in purpose or effect. To support its conclusion it noted that the city's use of an at-large election system where racial bloc voting existed prevented blacks from electing candidates of their choice.
After the Attorney General objected, the city sought a declaratory judgment in the U.S. District Court for the District of Columbia that its election changes were not discriminatory, but the court granted summary judgment to the United States. The city then appealed the district court's decision to the Supreme Court of the United States, and the Supreme Court of the United States affirmed the district court's decision. The city made several arguments on appeal, major ones of which are discussed in this chapter.

[29] *Id.* at 180.

[30] *Id.* at 180–181.

[31] South Carolina v. Katzenbach, 383 U.S. 301 at 309.

[32] *Id.* at 328.

[33] 446 U.S. at 181–182.

[34] 42 U.S.C. §1973b(b) (1976).

[35] 446 U.S. at 167.

[36] *Id.* During the 1965 House and Senate consideration of the Voting Rights Act of 1965, the issue of why a political subdivision within a covered State should not be permitted to bail out independently of the State was also addressed. Several reasons were given for the act's denying a political subdivision within a covered State the right to seek individual exemption from the Voting Rights Act. First, "where the discriminatory use of tests and devices is a matter of State policy it is appropriate that suspension of these tests and devices be statewide." H.R. Rep. No. 439, 89th Cong., 1st sess., *reprinted in* [1965] U.S. Code Cong. & Ad. News 2437, 2446. Second, because of the relationship between political subdivisions and State government, a political subdivision may be required to implement State laws or policies which discriminate against minorities irrespective of its own inclinations or intent. This was specifically noted in the Senate Judiciary Committee report on the proposed Voting Rights Act:

> [I]n most of the States affected by section 4 [bailout] local boards of registration are so closely and directly controlled by and subject to the direction of State boards of election—and, indeed, the State legislature—that they would be required to misapply tests and devices, irrespective of their own inclinations, if this suited the general policy of the State government. S. Rep. No. 162, 89th Cong., 1st sess., (Joint Views of 12 Members of the Judiciary Committee Relating to the Voting Rights Act of 1965, *reprinted in* [1965] U.S. Code Cong. & Ad. News 2508, 2554).

Preclearance

A State or political subdivision covered by one of the criteria in section 4 is subject to the requirements of section 5 of the act. Section 5 requires a covered jurisdiction to submit ("preclear") any proposed change in its voting laws, practices, or procedures to the U.S. Attorney General or to the U.S. District Court for the District of Columbia.[37] The submitting jurisdiction has the burden of proof in establishing that the proposed change does not have a racially discriminatory purpose or effect.[38] The jurisdiction may not enforce or administer the change if the Attorney General objects to it.[39] The new qualification or procedure may be enforced 60 days after the submission is completed if the Attorney General does not issue an objection.[40] The submitting jurisdiction still may seek a declaratory judgment in the U.S. District Court for the District of Columbia that the proposed change is not discriminatory in purpose or effect if the Attorney General objects.[41]

The scope of changes that must be submitted for preclearance is broad, including changes that appear to be minor. Legislation and administrative actions within the scope of section 5 review include, but are not limited to, the following types of changes:

(1) Any change in qualifications or eligibility for voting;

(2) Any change in procedures concerning registration, balloting, or informing or assisting citizens to register and vote;

(3) Any change in the constituency or boundaries of a voting unit (e.g., through redistricting, annexation, or reapportionment), the location of a polling place, change to at-large elections from district elections or to district elections from at-large elections;

(4) Any alteration affecting the eligibility of persons to become or remain candidates or obtain a position on the ballot in primary or general elections;

(5) Any change in the eligibility and qualification procedures for independent candidates;

(6) Any action extending or shortening the term of an official or changing the method of selecting an official (e.g., a change from election to appointment);

(7) Any change in the method of counting votes.[42]

The requirement that jurisdictions submit all changes in their voting laws, practices, and procedures is an effective device for preventing new or subtle forms of discriminatory practices in voting.[43] The importance of section 5 was discussed by Assistant Attorney General J. Stanley Pottinger during the 1975 hearings on extension of the Voting Rights Act:

> In summary, there have been significant improvements in the political role of blacks since the passage of the Voting Rights Act. . . .The number of objections which the Attorney General has made to changes in voting laws submitted to him under section 5 shows that there is still a potential for the passage of legislation which has either as its purpose or effect the exclusion of black voters from their rightful role. This potential could become reality in the absence of some objective control at the Federal level.[44]

In *City of Rome v. United States,* [45] the city, which was attempting to exempt itself from coverage under the act, argued that section 5 is unconstitutional since it requires jurisdictions subject to preclearance to prove that proposed changes in voting practices or procedures are not discriminatory in purpose or effect. The city alleged that section 1 of the 15th amendment only prohibits voting practices that have a discriminatory purpose and "that in enforcing that provision pursuant to section 2, Congress may not prohibit voting practices lacking discriminatory intent even if they are discriminatory in effect."[46]

The Supreme Court of the United States upheld the constitutionality of section 5. It stated that the city was actually arguing that the Court reverse one of its earlier decisions upholding the constitutionali-

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Not allowing each political subdivision within a covered State to bail out independently of the State also would remedy the problem of discrimination on a statewide level and would place the reponsibility for eliminating discrimination both with the State and its political subdivisions.
The 1965 House committee report on the proposed Voting Rights Act (H.R. 6400) also stated that allowing each political subdivision within a covered State to bail out independently of the State "would impose a continuation of the burdensome county-by-county litigation approach which has been shown to be inadequate." H.R. Rep. No. 439, 89th Cong., 1st sess., *reprinted in* [1965] U.S. Code Cong. & Ad. News 2437, 2446.

[37] 42 U.S.C. §1973c (1976).

[38] *Procedures for the Administration of Section 5 of the Voting Rights Act of 1965,* 28 C.F.R. §55.2 (1980).

[39] 42 U.S.C. §1973c (1976).

[40] *Id.*

[41] *Id.* §1973b(a).

[42] *Procedures for the Administration of Section 5 of the Voting Rights Act of 1965,* 28 C.F.R. §51.4 (1980).

[43] The Voting Rights Act establishes a broad definition of "voting," including all action needed to cast an effective ballot in any primary, special, or general election; this includes, but is not limited to, registering, casting a ballot, and having the ballot counted properly and included in the appropriate totals. 42 U.S.C. §1973l(c)(1) (1976).

[44] U.S., Congress, House, Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, *Extension of the Voting Rights Act: Hearings on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501,* 94th Cong., 1st sess., 1975, p. 174.

[45] 446 U.S. 156 (1980).

[46] *Id.* at 173.

ty of the special provisions of the Voting Rights Act, *South Carolina v. Katzenbach.* [47] In that decision the Court stressed that section 2 of the 15th amendment gave Congress power to enforce the voting guarantees of section 1 of that amendment. It stated:

> By adding this authorization [in §2], the Framers indicated that Congress was to be chiefly responsible for implementing the rights created in §1. "It is the power of Congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation. Some legislation is contemplated to make the [Civil War] amendments fully effective."[48] Accordingly, in addition to the courts, Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting.[49]

In *City of Rome,* the Supreme Court of the United States again found that section 5 was appropriate for enforcing the 15th amendment.[50] The Court stated, "Congress could rationally have concluded that, because electoral changes by jurisdictions with a demonstrable history of intentional racial discrimination in voting create the risk of purposeful discrimination, it was proper to prohibit changes that have a discriminatory impact."[51] The Supreme Court of the United States, therefore, affirmed the judgment of the district court that the city of Rome had failed to meet its burden of proving that certain electoral changes and annexations which were not precleared by the Attorney General did not have a discriminatory effect.[52]

Federal Observers and Examiners

Another of the act's special provisions permits the appointment of Federal examiners.[53] These examiners may be authorized by the Attorney General if he receives 20 meritorious written complaints from citizens in a jurisdiction claiming that their right to vote has been denied on account of race, color, or inclusion in a minority language group.[54] Federal examiners may also be authorized if the Attorney General believes their appointment is necessary to enforce the voting guarantees of the 14th or 15th amendments.[55] The selection and appointment of Federal examiners is handled by the U.S. Office of Personnel Management, formerly the U.S. Civil Service Commission.[56]

Under the act, duties of Federal examiners include interviewing and listing people eligible to vote and, at least once a month, transmitting a list of eligible voters to the appropriate State or local election official for inclusion on the jurisdiction's official voting list.[57] Each qualified voter listed by a Federal examiner is issued a certificate of eligibility to vote.[58] Additionally, examiners are available during an election and within 48 hours after the polls close to receive complaints that qualified voters have been denied their right to vote.

The use of Federal observers is another way in which the special provisions of the act attempt to deal with obstacles to voting that may be imposed at the local level. The Attorney General may request the U.S. Office of Personnel Management to appoint Federal observers for elections in those jurisdictions designated for examiners.[59] Observers are usually civil servants who work with attorneys from the Department of Justice.[60] They are assigned to polling places and observe whether persons who are eligible to vote are allowed to vote. They may also observe whether votes cast by eligible voters are being properly counted.

The Attorney General considers three basic factors before making a determination that Federal observers will be sent to a jurisdiction. These factors are:

(1) The extent to which those who will run an election are prepared so that there are sufficient voting hours and facilities, procedural rules for voting are adequately publicized, and nondiscriminatorily selected polling officials are instructed in election procedures;[61]

(2) The confidence of the minority community in the electoral process and the individuals con-

[47] 383 U.S. 301 (1966).
[48] Ex parte Virginia, 100 U.S. 339, 345 (1879); the Civil War Amendments were ratified in an attempt to provide newly freed slaves rights and privileges similar to those enjoyed by other citizens. The 13th amendment abolished slavery within the United States and its territories. The 14th amendment granted citizenship to the former slaves and prohibited State interference with a citizen's right to due process and equal protection of the laws. The 15th amendment gave the freedmen the right to vote.
[49] 446 U.S. at 174, *citing* South Carolina v. Katzenbach 383 U.S. at 325-26.
[50] 446 U.S. at 175.
[51] *Id.* at 177.
[52] *Id.* at 158.
[53] 42 U.S.C. §1973d (1976).
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] 42 U.S.C. §1973f (1976).
[60] *Id.;* David Hunter, attorney, Litigation Unit, U.S., Department of Justice, telephone interview, July 24, 1981.
[61] U.S., Congress, Senate, Committee on the Judiciary, Subcommittee on Constitutional Rights, *Hearings on Extension of the Voting Rights Act of 1965,* 94th Cong., 1st sess., 1975, S.407, S.903, S.1297, S.1409, and S.1443, p. 538. (testimony of J. Stanley Pottinger, Assistant Attorney General).

ducting the election, including the use of minorities as poll officials;[62]

(3) The possibility of forces outside the official election machinery (such as racial violence, threats of violence, or a history of discrimination in other areas) interfering with the election.[63]

Between January 1975 and December 1980, the Department of Justice sent examiners to two counties for purposes of listing people eligible to vote, Humphries and Madison Counties, Mississippi. The Department also counties and sent 5,234 observers to 74 counties covered by the Voting Rights Act.[64] (See appendix C for the covered jurisdictions designated for examiners and observers.)

Applicability of the Special Provisions to Noncovered Jurisdictions

Although the coverage formula in the Voting Rights Act designates which jurisdictions are subject both to the special provisions requiring preclearance and permitting the appointment of Federal examiners and observers, these remedies can be used in any jurisdiction in the United States, even though the jurisdiction is not included in the coverage formula. They can be used in jurisdictions in which courts have found violations of the Voting Rights Act based on statutes enforcing the 14th and 15th amendments.[65]

Under section 3(a) of the Voting Rights Act a court can authorize the appointment of Federal examiners in any jurisdiction (State or political subdivision) in the Nation if the Attorney General or an aggrieved person files suit to enforce the right to vote under the 14th and 15th amendments. Examiners may be appointed as part of any interlocutory order[66] if the court determines that they are necessary to enforce voting guarantees or as part of any final judgment if the court determines that violations of voting rights justifying equitable relief have occurred.[67]

Federal examiners have been appointed to three jurisdictions that were not included in the act's coverage formula: Thurston County, Nebraska;[68] Bartelme, Wisconsin;[69] and San Francisco, California.[70] The U.S. Department of Justice filed lawsuits against each of these jurisdictions seeking to enforce the voting guarantees of the 14th and 15th amendments. A consent decree or a preliminary injunction was entered in each of the cases.

Under section 3(c) of the Voting Rights Act the court may require preclearance by a State or political subdivision if the Attorney General or an aggrieved person files a suit under any statute to enforce the 14th or 15th amendments and the court finds that violations of voting rights have occurred.[71] As an alternative to the court, the jurisdiction may preclear its proposed changes in voting practices or procedures with the Attorney General. Preclearance becomes retroactive to the date the suit was filed and lasts as long as the court deems necessary.[72]

In *U.S. v. Thurston County, Nebraska,* [73] preclearance was one of the remedies stipulated in the consent decree between the county and the U.S. Department of Justice. The United States alleged that the county's at-large method of electing its county board of supervisors diluted the voting rights of American Indians, in violation of the 14th and 15th amendments and section 2 of the Voting Rights Act. A consent decree was entered in the case

[62] *Id.*
[63] *Id.*
[64] Gerald W. Jones, Chief, Voting Section, U.S. Department of Justice, letter to Caroline Davis Gleiter, Assistant Staff Director for Program and Policy Review, U.S. Commission on Civil Rights, Mar. 12, 1981; U.S., Department of Justice, Civil Rights Division, Voting Section, "Counties Designated as Examiner Counties," Mar. 9, 1981; and U.S., Office of Personnel Management, "Cumulative Totals on Voting Rights Examining," Dec. 31, 1980.
[65] 42 U.S.C. §1973a(a) (1976).
[66] An interlocutory order is a temporary action by the court during the course of a lawsuit which decides an issue but is not a final determination of the entire controversy.
[67] *Id.* Section 3(a) also provides that examiners need not be authorized if incidents of denials of voting rights "(1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future."
[68] U.S. v. Thurston County, No. 78-0-380 (D. Neb. May 9, 1979) (consent decree) (see discussion of this case in the text).
[69] U.S. v. Town of Bartelme, No. 78-c-101 (E.D. Wisc. Feb. 17, 1978) (order granting preliminary injunction). This was an action to enforce the Voting Rights Act of 1965 as amended and the 14th and 15th amendments. The United States alleged that the town of Bartelme, Wisconsin, and Shawano County, Wisconsin, denied Indian residents of the Stockbridge-Munsee Reservation the right to vote. The town signed a petition which the county approved severing the reservation from the town of Bartelme. Residents of the reservation, who formerly had voted and held elective office in the town, were not allowed to vote for town or county officials in Bartelme. A preliminary injunction was issued ordering the "new" town of Bartelme to allow residents of the Stockbridge-Munsee Reservation to vote at polling locations in Bartelme during the upcoming primary and general county elections.
[70] U.S. v. City and County of San Francisco, No. C-78 2521 CFP (N.D. Cal. May 8, 1980). This was an action to enforce the minority language provisions of the Voting Rights Act. The United States alleged that Chinese- and Spanish-speaking residents of the city and county were not receiving bilingual assistance in registration and voting, as required by the minority language provisions. (See the following section for a discussion of the minority language provisions.)
[71] 42 U.S.C. §1973a(c) (1976).
[72] *Id.*
[73] United States v. Thurston County, No. 78-0-380 (D. Neb., May 9, 1979) (consent decree).

requiring county commissioners to be elected from single-member districts.[74] As part of the decree, Thurston County was placed under sections 3(a) (i.e., Federal examiners will be appointed) and 3(c) (i.e., the jurisdiction must preclear its election changes) of the Voting Rights Act for 5 years.[75]

Minority Language Provisions

The special provisions requiring assistance to language minorities were added to the Voting Rights Act in 1975. The act was expanded because the Congress determined that "voting discrimination against citizens of language minorities is pervasive and national in scope."[76] Congress found that such citizens have been effectively excluded from participation in the electoral process through various practices and procedures, including holding English-only elections.[77]

Jurisdictions covered under sections 203(b) and 4(f)(4) of the Voting Rights Act as amended must comply with the special provisions requiring assistance to citizens of language minorities.[78] Specifically, these jurisdictions must provide:

> . . .any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, . . .in the language of the applicable minority group as well as in the English language.[79]

The provisions further state that where the language of the applicable minority group is oral or unwritten, or, in the case of Alaskan Natives, if the predominant language is historically unwritten, the jurisdiction only is required to furnish oral instructions, assistance, or other registration and voting information.[80] Over 100 counties and cities nationwide are covered by the minority language provisions. Table B.2 in appendix B lists those jurisdictions covered by the minority language provisions of the Voting Rights Act.

The Effect of the Voting Rights Act

Since passage of the Voting Rights Act, some impediments to registration and voting have been removed, and minority registration and voting have increased substantially. The increase in registration and voting has also led to an increase in the number of minority elected officials, who rely substantially on minority voters to win election. The remainder of this chapter will discuss trends in the numbers of minority elected officials and minority registration in the jurisdictions that are covered under the preclearance provisions; that is, they meet one of the requirements in section 4 and are therefore required to preclear changes in voting practices and procedures in accordance with section 5 of the Voting Rights Act.

Minority Elected Officials

Black Elected Officials

The number of blacks elected to public office in the States covered by the preclearance provisions of the Voting Rights Act has been increasing steadily since the act was extended in 1975. In July 1980 a total of 2,042 blacks held public office in the Southern States under statewide coverage,[81] according to data supplied by the Joint Center for Political Studies, a public interest research firm providing information and technical assistance to black elected officials, and the Virginia State Conference NAACP. The largest number of black elected officials was in Mississippi, where blacks held 387 elective offices. The State with the smallest number of black officeholders was Virginia, with 124. Table 2.1 shows the number of black elected officials, by type of position, in the Southern States covered by the Voting Rights Act. (Data in this and the following tables include all of North Carolina, although 60 of 100 counties are not subject to preclearance.)

In 1980 blacks held a wide variety of political positions. Ten State senators were black, as were 94 State representatives. The elective office that blacks held most frequently was membership on municipal governing bodies. Blacks also were often members of elected school boards. They were less frequently elected to county governing boards or to law enforcement positions (including sheriffs and judges).

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[74] *Id.* at 3.
[75] *Id.*
[76] 42 U.S.C. §1973b(f)(1) (1976).
[77] *Id.* §§1973b(f)(3), 1973aa-1a.
[78] *Id.* §1973aa-1a(e) (1976). The language minorities covered under the act are American Indians, Asian Americans, Alaskan Natives, and persons of Spanish heritage.
[79] 42 U.S.C. §§1973b(f)(4) and 1973aa-1a(c) (1976). The statute requires "the jurisdiction to decide what materials must be provided in a minority language. A jurisdiction required to provide minority language materials is only required to publish in the language of the applicable language minority group materials distributed to or provided for the use of the electorate generally." 28 C.F.R. §55.19 (1980).
[80] 42 U.S.C. §§1973b(f)(4), 1973aa-1a(c) (1976).
[81] This figure includes North Carolina which is not subject to statewide coverage under the preclearance provisions of the Voting Rights Act.

TABLE 2.1 Black Elected Officials in Southern States Covered Under the Preclearance Provisions of the Voting Rights Act, July 1980

	U.S. Congress		State legislature		County offices				Municipal offices					
	Senate	House	Senate	House	County governing board	Law enforcement officials	County school board	Other positions	Mayor	Governing body	City school board	Other	Other officials	Total
Alabama	0	0	2	13	18	40	23	9	16	110	2	5	0	238
Georgia	0	0	2	21	20	8	31	5	7	139	12	4	0	249
Louisiana	0	0	2	10	85	34	87	1	12	119	4	8	1	363
Mississippi	0	0	2	15	27	77	45	34	17	143	13	14	0	387
North Carolina[1]	0	0	1	4	18	7	42	2	13	136	16	3	5	247
South Carolina	0	0	0	14	34	20	47	5	13	86	9	1	9	238
Texas	0	1	0	13	5	18	77*	0	5	68	0	5	4	196
Virginia	0	0	1	4	34	5	—	3	5	71	—	1	0	124
Total	0	1	10	94	241	209	352	59	88	872	56	41	19	2,042

[1] Statewide data, including the 40 counties subject to preclearance.
* School board members elected in independent school districts.
— Not an elective position.

Source: Joint Center for Political Studies, *National Roster of Black Elected Officials*, vol. 10 (1981). Data on Virginia supplied by Virginia State Conference NAACP.

The number of blacks holding public office in 1980 is especially striking when comparison is made with the number of blacks who held public office in 1974, before the act was extended. That year, according to data from the Joint Center for Political Studies, 964 blacks had been elected to public office in the 6 covered States in the South, plus North Carolina. (Texas was not covered at the time.) As table 2.2 shows, the number of blacks holding elective offices almost doubled in most of these States between 1974 and 1980. The largest percentage increase occurred in Louisiana, where the number of black elected officials rose 143.6 percent between 1974 and 1980. By contrast, the number of black officials elected in North Carolina rose 55.3 percent.[52]

In most States covered under the preclearance provisions, the number of blacks increased in each type of office, and in some cases the gains were quite large. In South Carolina, for example, the number of black county and city school board members rose from 24 to 56. In Mississippi the number of blacks on county governing boards rose from 8 to 27, and the number of blacks on county and city local school boards rose from 27 to 58. The number of black mayors in Louisiana tripled, from 4 to 12, between 1974 and 1980.

These large numerical increases in the number of blacks elected to public office do not necessarily indicate that they are now achieving fair representation. Blacks remain seriously underrepresented as officeholders throughout the South. In Alabama and Georgia, for example, about one-quarter of the population is black, but 5.7 percent and 3.7 percent of the elected officials in those two States, respectively, were black in 1980. In Mississippi, over one-third of the population is black, but 7.3 percent of elected officials were black. In none of the Southern States covered under the preclearance provisions of the Voting Rights Act were blacks elected to public office at a rate approaching their proportion in the population. Table 2.3 provides data on the proportions of elected officials who are black and the black population in Southern States subject to the preclearance provisions.

The underrepresentation of blacks in public office is evident at every level, but is most obvious at the highest levels of government. Through July 1980, few blacks had been elected to the U.S. Congress or to State senates in the Southern States covered by the preclearance provisions. Larger numbers of black elected officials, however, had been elected to municipal governing bodies or to local school boards.

Although the number of blacks elected to public office is increasing, they remain a very small percentage of all officials. For instance, over 40 percent of black officials were members of municipal governing bodies in all of the Southern States subject to preclearance, but in no Southern State did blacks constitute more than about 10 percent of municipal body members; and in most States blacks were a far smaller proportion, as can be seen in table 2.4. In Virginia, where 18.9 percent of the population is black, blacks constituted 5.2 percent of municipal governing bodies. In Georgia, where 26.8 percent of the citizens are black, 5.2 percent of municipal body members were black.

The underrepresentation of blacks as elected officials can also be seen in an analysis of elected county officials in counties with at least a 20 percent black population. Blacks were consistently underrepresented as elected county officials throughout the South in 1980. In Georgia, in 107 counties blacks constituted at least 20 percent of the population, as table 2.5 shows. Only 20 blacks served on county governing boards in those 107 counties as of July 1980. Almost half of the elected black county officials in those counties (30 of 62 officials) were school board members. Moreover, 74.8 percent of the counties that were at least 20 percent black had no black elected officials.

The same situation exists in other Southern States: most black county officials have been elected to local school boards, but not to the governing boards or to law enforcement positions; and in many counties with substantial black populations, there were no black elected county officials. The proportion of counties with at least a 20 percent black population that had no black elected county officials ranged from 15.2 percent (Louisiana) to 74.8 percent (Georgia). A list of all counties with a minimum black population of 20 percent, and the number of blacks elected to each type of county office, is shown in table D.1 in appendix D.

[52] This report covers only changes occurring since 1975. Available data indicate, however, that there were fewer than 100 black elected officials in the 7 Southern States prior to the enactment of the Voting Rights Act in 1965. By 1968, 156 blacks had been elected to public office in these States. *See* U.S., Commission on Civil Rights, *Political Participation* (1968), p. 15

TABLE 2.2 Change in Number of Black Elected Officials in Southern States Covered Under the Preclearance Provisions of the Voting Rights Act, April 1974—July 1980

State and Year	U.S. Congress		State legislature		County offices				Municipal offices						
	Senate	House	Senate	House	County governing board	Law enforcement officials	County school board	Other positions	Mayor	Governing body	City school board	Other	Other elected officials	Total	Percent increase
Alabama															
1974	0	0	0	3	9	52	16	12	8	48	0	1	0	149	
1980	0	0	2	13	18	40	23	9	16	110	2	5	0	238	+ 59.7%
Georgia															
1974	0	1	2	14	8	6	26	3	2	69	5	1	0	137	
1980	0	0	2	21	20	8	31	5	7	139	12	4	0	249	+ 81.8
Louisiana															
1974	0	0	0	8	32	19	41	0	4	38	0	7	0	149	
1980	0	0	2	10	85	34	87	1	12	119	4	8	1	363	+ 143.6
Mississippi															
1974	0	0	0	1	8	41	24	19	7	62	3	23	3	191	
1980	0	0	2	15	27	77	45	34	17	143	13	14	0	387	+ 102.6
North Carolina[1]															
1974	0	0	0	3	7	2	29	0	8	105	5	0	0	159	
1980	0	0	1	4	18	7	42	2	13	136	16	3	5	247	+ 55.3
South Carolina															
1974	0	0	0	3	18	12	23	2	6	51	1	0	0	116	
1980	0	0	0	14	34	20	47	5	13	86	9	1	9	238	+ 105.2
Virginia															
1974	0	0	1	1	15	4	—	2	1	38	—	1	0	63	
1980	0	0	1	4	34	5	—	3	5	71	—	1	0	124	+ 96.8

[1] Statewide data, including the 40 counties subject to preclearance.
— Not an elective position.

Source: Joint Center for Political Studies, *National Roster of Black Elected Officials*, vol. 4 (1974), and vol. 10 (1981). Data on Virginia supplied by Virginia State Conference NAACP.

TABLE 2.3 Blacks as Percentage of Population and Elected Officials in Southern States Covered Under the Preclearance Provisions of the Voting Rights Act, July 1980

State	Population percent black, 1980	Elected officials		
		Total officials	Black officials	
			Number	Percent of total
Alabama	25.6%	4,151	238	5.7%
Georgia	26.8	6,660	249	3.7
Louisiana	29.4	4,710	363	7.7
Mississippi	35.2	5,271	387	7.3
North Carolina[1]	22.4	5,295	247	4.7
South Carolina	30.4	3,225	238	7.4
Texas	12.0	24,728	196	0.8
Virginia	18.9	3,041	124	4.1

[1] Statewide data, including the 40 counties subject to preclearance.

Source: Joint Center for Political Studies, *National Roster of Black Elected Officials*, vol. 10 (1981). Data on Virginia supplied by Virginia State Conference NAACP.

TABLE 2.4 Black Elected Officials as Percentage of all Elected Officials in Southern States Covered Under the Preclearance Provisions of the Voting Rights Act, July 1980

State	U.S. Congress		State legislature		County governing body	Local school board	Municipal governing board	Population percent black, 1980
	Senate	House	Senate	House				
Alabama	0.0%	0.0%	5.7%	12.4%	6.6%	7.1%	5.3%	25.6%
Georgia	0.0	0.0	3.6	11.7	3.4	5.9	5.2	26.8
Louisiana	0.0	0.0	5.1	9.5	13.2	13.4	9.4	29.4
Mississippi	0.0	0.0	3.8	12.3	6.6	10.3	10.4	35.2
North Carolina[1]	0.0	0.0	2.0	3.3	3.7	7.4	6.0	22.4
South Carolina	0.0	0.0	0.0	11.3	11.7	11.6	6.7	30.4
Texas	0.0	4.2	0.0	8.7	0.5	1.0	1.4	12.0
Virginia	0.0	0.0	2.5	4.0	6.8	—	5.2	18.9

[1] Statewide data, including the 40 counties subject to preclearance.

— not an elective position.

Sources: U.S., Department of Commerce, Bureau of the Census, *Popularly Elected Officials*, vol. 1, no. 2 (1979), GC77(1)-2, and Joint Center for Political Studies, *National Roster of Black Elected Officials*, vol. 10 (1981). Data on Virginia supplied by Virginia State Conference NAACP.

Even in counties with a majority black population, blacks continue to have difficulty being elected, as table 2.6 shows. In Alabama, 10 counties had a majority black population. Two of these counties had no black elected county officials. In every covered Southern State except Texas (which has no majority black county) and Virginia, there is at least one predominantly black county with no black elected county officeholder in any position.

Hispanic Elected Officials

Data on the number of Hispanics elected to public office, although not as complete as data on blacks, indicate that Hispanics are also underrepresented as elected officials. In 1979–1980, according to data supplied by the Mexican American Legal Defense and Educational Fund (MALDEF), there were 1,138 Hispanic elected officials in the two States covered under the preclearance provisions that have large Spanish-speaking populations, Arizona and Texas. Most of the Hispanic officials were school board members (575) or members of municipal governing bodies (372). As table 2.7 shows, few Hispanics were elected to the U.S. Congress (2) or to State legislatures (32).[83]

The underrepresentation of Hispanics in elective offices is seen by comparing the percentage of Hispanics in these two States with the percentage of Hispanic officeholders, as shown in table 2.8. In Texas, Hispanics constituted 21.0 percent of the population but were 6.3 percent of all elected officials within the sample; in Arizona, Hispanics elected to public office constituted 13.3 percent of all elected officials within the sample, and their percentage in the population was 16.2 percent. Although these figures suggest that Hispanics are well represented in Arizona, further examination reveals that Hispanics were primarily municipal body and school board members; they were underrepresented on county governing boards, and in the State house of representatives. The percentages of officials in each office who were Hispanic are shown in table 2.9.

Data for county elected officials in Texas show that Hispanics were also underrepresented in these positions. Texas has 54 counties in which Hispanics constitute at least 20 percent of the population.[84] In 1979 these counties had 77 Hispanic members of governing boards, an average of less than 1.5 per county.[85] These 54 counties had 9 elected Hispanic law enforcement officials (county judges), 430 local school board members, and 47 other elected county officials (including county clerk, tax assessor and collector, auditor, and county treasurer). In 8 of the 54 counties (14.8 percent) in which Hispanics constituted at least 20 percent of the population, there were no elected Hispanic county officials.[86]

Most of the Hispanic elected officials in Texas were in the 25 counties in which Hispanics constituted a majority of the population. Of all elected Hispanic county officials in Texas, 64 of the governing board members (77.1 percent), 8 of the county judges (72.7 percent), 312 of the school board members (65.3 percent), and 43 of the other elected county officials (91.5 percent) were in these 25 predominantly Hispanic counties. For example, Hidalgo County, which was 81.3 percent Hispanic, had 3 Hispanic governing board members, 1 Hispanic law enforcement official, 84 Hispanic school board members, and 3 other Hispanic officials. A complete list of all counties in Texas with at least a 20 percent Hispanic population, and the number of elected Hispanic officials in those counties, is in table D.2 in appendix D.

Minority Registration

Data on minority registration in States covered by the preclearance provisions of the Voting Rights Act were collected by the Bureau of the Census in 1976.[87] These data, which remain the most recent on

[83] Although the States of California and Colorado are not covered under section 5, certain counties are covered by section 5 and section 203 of the Voting Rights Act and data for these States are included in tables 2.7, 2.8, and 2.9. These States also have relatively few Hispanic elected officials. (Table B.3 in appendix B lists jurisdictions covered by section 5 and section 203.)

[84] U.S., Department of Commerce, Bureau of the Census, *Census of Population and Housing: 1980*, PHC80-V-45, table 1, pp. 4–32.

[85] Counties in Texas have an average of 4.0 governing board members. U.S., Department of Commerce, Bureau of the Census, *Popularly Elected Officials*, No. GC77(1)-2 (1979), table 7; data on Hispanics in elected positions in Texas were compiled by the Southwest Voter Registration Education Project, "Texas Roster of Spanish Surname Elected Officials" (July 1980) (hereafter cited as "Texas Roster").

[86] "Texas Roster."

[87] This survey was conducted by the Bureau of the Census pursuant to the requirements of section 207 of the Voting Rights Act of 1965 as amended (42 U.S.C. §1973aa-5 (1976)). Section 207 was added to the Voting Rights Act in 1975. This section requires the Bureau of the Census to conduct a survey of registration and voting in jurisdictions covered by the preclearance provisions following every Federal election. It also allows the U.S. Commission on Civil Rights to designate jurisdictions to be surveyed after any election. Commission staff met with personnel from the Bureau of the Census on numerous occasions following passage of the 1975 amendments, to discuss plans for a survey of registration and voting in all counties covered by the preclearance provisions. In 1976 the Bureau of the Census conducted a limited survey, which did not include data on a county-by-county basis for States under statewide coverage. After completion of this

TABLE 2.5 Black Elected County Officials in Southern States Covered Under the Preclearance Provisions of the Voting Rights Act, in Counties with 20 Percent or More Black Population, July 1980

State	Counties at least 20 percent black 1980	County governing board	Law enforcement officials	Local school board	Other county positions*	Counties with no black county elected officials	
						Number	Percent
Alabama	37	18	39	23	9	22	59.5%
Georgia	107	20	7	30	5	80	74.8
Louisiana	46	76	32	81	0	7	15.2
Mississippi	65	27	75	44	34	37	56.9
North Carolina[1]	55	16	6	29	0	23	41.8
South Carolina	40	32	20	45	5	14	35.0
Texas	28	3	4	19**	0	13	46.4
Virginia	42	33	5	—	3	19	45.2

[1] Statewide data, including the 40 counties subject to preclearance.
* Other county positions includes election commissioners, treasurers, tax assessors, etc.
** School board members elected in independent school districts in Texas.
— Not an elective position.

Source: Joint Center for Political Studies, *National Roster of Black Elected Officials*, vol. 10 (1981). Data on Virginia supplied by Virginia State Conference NAACP.

TABLE 2.6 Black Elected County Officials in Southern States Covered Under the Preclearance Provisions of the Voting Rights Act, in Counties with 50 Percent or More Black Population, July 1980

State	Counties at least 50 percent black 1980	Offices held				Counties with no black county elected officials	
		County governing board	Law enforcement officials	Local school board	Other county positions*	Number	Percent
Alabama	10	16	26	20	9	2	20.0%
Georgia	19	9	7	9	5	9	47.4
Louisiana	6	13	8	18	0	1	16.7
Mississippi	21	21	61	37	29	4	19.0
North Carolina[1]	7	2	0	7	0	3	42.9
South Carolina	12	16	12	8	4	2	16.7
Texas	0	0	0	0**	0	0	0.0
Virginia	5	11	3	—	3	0	0.0

[1] Statewide data, including the 40 counties subject to preclearance.
* Other county positions include election commissioners, treasurers, tax assessors, etc.
** School board members elected in independent school districts in Texas.
— Not an elective position.

Source: Joint Center for Political Studies, *National Roster of Black Elected Officials*, vol. 10 (1981). Data on Virginia supplied by Virginia State Conference NAACP.

Table 2.7 Hispanic Elected Officials, by State, 1979–1980

State	U.S. Congress	State legislature		County governing board	County judges	School board members	Mayor	Municipal governing body	Total
		Senate	House						
Arizona	0	5	6	4	—	97	14	79	205
California[1]	1	3	3	16	—	319	20	134	496
Colorado[2]	0	3	5	10	—	49	11	94	172
Texas	2	4	17	83	11	478	45	293	933
Total	3	15	31	113	11	943	90	600	1,806

— Not an elective position.
[1] Statewide data, including the three counties subject to preclearance.
[2] Statewide data, including one county subject to preclearance.

Source: Mexican American Legal Defense and Educational Fund, "Chicano Political Participation in the Southwest, 1979–80" (1980). Data on Texas from Southwest Voter Registration Education Project, "Texas Roster of Spanish Surname Elected Officials" (July 1980).

TABLE 2.8 Hispanics as Percentage of Population and Elected Officials, by State, 1979–1980

State	Population percent Hispanic, 1980	Elected officials[3]		
		Total officials	Hispanic officials	
			Number	Percent of total
Arizona	16.2%	1,547	205	13.3%
California[1]	19.2	7,595	496	6.5
Colorado[2]	11.7	3,143	172	5.5
Texas	21.0	14,880	933	6.3

[1] Statewide data, including the three counties subject to preclearance.
[2] Statewide date, including one county subject to preclearance.
[3] Totals exclude most elected judicial offices and elected positions in special district governments. Data on Hispanic representation in these offices are not available.

Source: Mexican American Legal Defense and Educational Fund, "Chicano Political Participation in the Southwest, 1979–80" (1980). Data on Texas from Southwest Voter Registration Education Project, "Texas Roster of Spanish Surname Elected Officials" (July 1980).

Table 2.9 Hispanic Elected Officials, as Percentage of all Elected Officials, by State, 1979–1980

State	U.S. Congress	State legislature		County governing board	Local school board	Municipal governing body	Population percent Hispanic, 1980
		Senate	House				
Arizona	0	16.7%	10.0%	9.3%	10.2%	18.9%	16.2%
California[1]	2.2%	7.5	3.8	5.7	5.9	6.1	19.2
Colorado[2]	0	8.6	7.7	5.4	4.8	5.7	11.7
Texas	7.7	12.9	11.3	8.1	6.1	5.9	21.0

[1] Statewide data, including the three counties subject to preclearance.
[2] Statewide data, including one county subject to preclearance.

Sources: U.S., Department of Commerce, Bureau of the Census, *Popularly Elected Officials*, vol. 1, no. 2 (1979), GC77 (1)-2; and Mexican American Legal Defense and Educational Fund, "Chicano Political Participation in the Southwest, 1979–80" (1980). Data on Texas from Southwest Voter Registration Education Project, "Texas Roster of Spanish Surname Elected Officials" (July 1980).

TABLE 2.10 Percentage of Voting Age Population Reported Registered in Jurisdictions Covered by Section 5 of the Voting Rights Act, by Race and Ethnicity, 1976

State	Percent reported registered, 1976			
	White	Black	Hispanic	American Indian/ Alaskan Native
Alabama	75.4%	58.1%	—	—
Alaska	73.0	—	—	62.8%
Arizona	71.5	—	60.9%	48.0
California*	65.3	—	49.5	—
Colorado*	68.1	—	52.8	—
Florida*	66.5	—	63.7	—
Georgia	73.2	56.3	—	—
Louisiana	78.8	63.9	—	—
Michigan**	63.7	—	52.4	—
Mississippi	77.7	67.4	—	—
New York*	69.8	—	51.4	—
North Carolina*	63.1	48.2	—	65.6
South Carolina	64.1	60.6	—	—
South Dakota*	77.3	—	—	52.7
Texas	69.4	64.0	61.1	—
Virginia	67.0	60.7	—	—

* Selected county (counties) subject to preclearance rather than entire State.
** Selected towns subject to preclearance rather than entire State.
— Group not covered under section 5.

Source: U.S., Department of Commerce, Bureau of the Census, *Registration and Voting in November 1976—Jurisdictions Covered by the Voting Rights Act Amendments of 1975*, series P-23, no. 74 (1978), tables 1 and 2.

TABLE 2.11 Estimated Voting Age Population and Registered Voters, by State and Race, 1980

	Voting age population (1980 estimates)		Registered voters		Percent registered		Difference
	Black	White	Black	White	Black	White	
Louisiana	759,000	2,007,000	463,648	1,533,566	61.1%	76.4%	15.3%
North Carolina	796,000	3,216,000	439,713	2,313,722	55.2	71.9	16.7
South Carolina	573,000	1,483,000	319,826	914,363	55.8	61.7	5.9

Sources: U.S., Department of Commerce, Bureau of the Census, *Projections of the Population of Voting Age for States: November 1980*, series P-25, no. 879 (1980), table 1; State of Louisiana, Secretary of State, Dec. 31, 1980; State of North Carolina, State Board of Elections, Oct. 6, 1980; State of South Carolina, State Election Commission, Oct. 24, 1980. Data for other covered States not available.

registration by race or ethnicity in all jurisdictions subject to preclearance, are summarized in table 2.10.[88] This table shows that substantial disparities in registration rates between whites and minorities continued in virtually every covered State. In all States, approximately two-thirds to three-fourths of the white voting age population was registered in 1976, but a far smaller percentage of minorities were registered. In Louisiana, for example, 78.8 percent of the whites were registered to vote, but 63.9 percent of the blacks. In Alabama 75.4 percent of the whites were registered, but 58.1 percent of the blacks. In the two covered counties in South Dakota, 77.3 percent of the whites were registered, but 52.7 percent of the American Indians. In Arizona 71.5 percent of the whites, but 48.0 percent of the American Indians and 60.9 percent of the Hispanics were registered. In Alaska 62.8 percent of the Alaskan Natives were registered, compared to 73.0 percent of the whites. In covered counties in New York two-thirds of the whites (69.8 percent), but about half of the Hispanics (51.4 percent) were registered in 1976.

Statewide registration statistics for the 1980 election are available for only three of the States studied: Louisiana, North Carolina, and South Carolina. (Other Southern States subject to preclearance do not collect voter registration statistics by race, except for the State of Georgia, which has recently begun to do so.) In each of these three States, the black registration rate is substantially lower than the white, as shown in table 2.11. In Louisiana 76.4 percent of the white voting age population was registered, in contrast to 61.1 percent of the black voting age population. Statewide figures for North Carolina show that 71.9 percent of the whites were registered, compared with 55.2 percent of the blacks. In South Carolina, 61.7 percent of the whites and 55.8 percent of the blacks were registered.

Conclusion

The figures presented in this chapter show that minorities are still considerably underrepresented as elected officials, despite progress that has been made since the Voting Rights Act was extended in 1975. Moreover, minority registration rates in 1976 continued to lag well behind the rates of whites in virtually every jurisdiction covered under the original special provisions; more recent surveys are not available. These data indicate that minorities still face numerous barriers in registering, voting, and running for office. The problems that they continue to encounter are discussed in the following chapters.

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survey the Commission requested that the next survey, following the 1978 Federal election, include these data, but funds needed to complete it were not approved by the Congress, and no further surveys were done. The 1976 survey was completed in 78 jurisdictions covered by section 4(a) and in the 9 States under statewide coverage. The data are for registration as reported in personal interviews; actual registration figures may be lower.

[88] This is the only survey of registration by race in all jurisdictions covered by the preclearance provisions; similar data from other years are not available for comparison. Estimates of registration prior to the enactment of the Voting Rights Act, however, indicated that the percentage difference in registration rates for blacks and whites ranged from about 23 percent to about 63 percent in the States under statewide coverage. In 1965, for instance, it was estimated that in Louisiana 80.5 percent of the white voting age population was registered, and about 31.6 percent of the black voting age population, a difference of 48.9 percentage points. U.S., Commission on Civil Rights, *The Voting Rights Act: Ten Years After* (1975), table 3, p. 43.

Chapter 3

Registration

The Voting Rights Act of 1965, as amended, prohibits registrars from refusing to allow minorities to register.[1] It also bans the use of literacy tests that were formerly used to prevent minorities from registering and voting.[2] Although minority registration rates have increased substantially since 1965,[3] minorities nevertheless experience disproportionately low registration rates compared to whites, as chapter 2 showed.

Low registration rates have been attributed to a combination of inconveniences and obstacles[4] that have made it very difficult for minorities to register. The Washington Research Project, a private interest research organization, and the League of Women Voters Education Fund, have summarized in separate reports some of these problems: Registration offices are usually located in courthouses and typically have been open only during business hours; public transportation to registration offices, especially for those who live in rural areas, has usually been unavailable; minority deputy registrars, who could facilitate registration in minority communities, have rarely been appointed.[5]

In its 1972 report, *The Shameful Blight,* the Washington Research Project explained why these obstacles have disproportionately affected registration rates for blacks in the South:

> These barriers are doubly burdensome to blacks in the South. First, because blacks in the past were not allowed to vote, the initial process of registration has not yet been completed for them. Secondly, inconvenient hours are more burdensome for blacks, whose economic situation frequently does not allow them the flexibility [of] many whites. . . .In addition, lower educational levels—also the result of discrimination—and the memory of past discrimination make complicated forms and unhelpful or discourteous [registration] staff a greater problem [for them].[6]

In addition to these problems, there are other barriers that affect minority registration adversely. These include the "discriminatory closing of registration offices, physical and economic intimidation of [minority] registrants, interference with [minority] voter registration campaigns, and segregation in the registration process."[7] The purpose of this chapter is to determine whether conditions such as these continue to exist for minorities in jurisdictions studied by the Commission. Registration problems confronted by members of minority language communities are primarily addressed in chapter 7.

Harassment and Intimidation

In the past, minorities have reported that when they attempted to register, white registration officials were discourteous and intimidating towards them. One study, for example, reported that blacks in some areas had expressed fear of registering to vote, had experienced "economic reprisals" for registering, and had been harassed and intimidated by registration officials to the point that they refused to register.[8] In some of the jurisdictions that the Commission studied, blacks continue to be discouraged from registering and participating in registration activities because white registrars reportedly are discourteous and harass minorities who come to register, and otherwise discourage their participation in registration activities. Instances of harassment and intimidation reported to the Commission are discussed below.

[1] 42 U.S.C. §§1971, 1973 to 1973bb-1 (1976).
[2] *Id.*
[3] Washington Research Project, *The Shameful Blight: The Survival of Racial Discrimination in Voting in the South* (Washington, D.C.: 1972), p. 12 (hereafter cited as *Shameful Blight*); U.S., Commission on Civil Rights, *The Voting Rights Act: Ten Years After*, 1975), pp. 52–58 (hereafter cited as *Voting: Ten Years After*).
[4] League of Women Voters Education Fund, *Administrative Obstacles to Voting* (1972) (hereafter cited as *Administrative Obstacles*).
[5] *Shameful Blight*, ch. 2, and *Administrative Obstacles*.
[6] *Shameful Blight*, p. 13.
[7] Ibid.
[8] Ibid., pp. 18–19.

In 1980 a black 25-year-old female attorney went to the Greensville County courthouse in Emporia, Virginia, to register to vote.[9] She reported that the attitude of the white person who registered her was "nasty" and that "the atmosphere was uncomfortable."[10] The registrar was very "noncongenial" towards the black applicant until she learned that the registrant was an attorney.[11] According to the respondent, "She [the registrar] became more congenial towards me."[12] The respondent also noted that after asking about her occupation, the registrar then wanted to know the name of her employer.[13] The Virginia registration form does not contain any specific question for the name of an employer.

The registrant said that this questioning could easily deter some blacks from registering, because "they are scared of whites asking them questions. They, especially some of the older population, still remember the way things used to be to register and having to go through a lot of questions reminds them of those times."[14]

In Port Gibson, Mississippi, the city clerk, who is the registrar for city elections, described the registration process as being "simple and quick."[15] According to her, registration is an informal procedure whereby the registrant gives his or her name, address, and employment.[16] According to Mississippi law, every person entitled to be registered shall sign his or her name in the registration book and "thereupon be registered. . . ."[17] The Claiborne County tax assessor who lives in Port Gibson explained that the registration of a white may be a "simple" process, but that the registration of blacks may "take up to 1 hour" to complete.[18] The respondent also noted, "Once the clerk hears of black registration efforts, she will start erratic registration [procedures]."[19] For example, he explained that when a group of blacks comes into the office to register, "the registrar may come in at 9, take a break at 10, and then take a long lunch."[20] He stressed that these practices have occurred since blacks have been registering to vote in Port Gibson.[21]

He also indicated that whites who come to register are treated differently from blacks, contrasting the registration procedure he once witnessed for a black person and a white person. The registrar was friendly and congenial[22] towards the white person, but subjected the black person to "interrogation."[23] The tax assessor said the questioning of black applicants by the registrar is "intimidating."[24] The registrar asks blacks such unrequired questions as, "Do you own the house you're staying in?" and "How many children do you have?"[25] Once he observed the clerk asking an elderly black woman such questions. "The woman became so nervous that she could not answer any of the questions."[26]

To register in Port Gibson, applicants have to give information on their employment.[27] The tax assessor thinks that asking persons, especially blacks, about their employment is a "form of harassment."[28] Once he heard the registrar ask a black person, "Do you know if [your employer] knows you're here registering?"[29] Questions about an individual's employment can be more intimidating to older black persons because, according to the respondent, "To an older black, this [type of questioning] is fearful. The fear is that the white employer will find out. . . .For the older black, it's a scare tactic. The older black person also feels that the employer knows who he or she is going to vote for."[30]

A community leader and former mayoral candidate in Port Gibson who gave a similar account stated that the registrar should show "common

[9] Alda White, attorney for Emporia Legal Services, interview in Emporia, Va., Jan. 28, 1981.
[10] Ibid.
[11] Ibid.
[12] Ibid.
[13] Ibid. For the response of Sarah Harris, city registrar for Emporia, Va., to these statements, see appendix G of this report.
[14] Ibid.
[15] Carole Brezeale, city clerk, interview in Port Gibson, Miss., Dec. 5, 1980 (hereafter cited as Brezeale Interview).
[16] Ibid.
[17] Miss. Code Ann. §23-5-31 (Supp. 1980). The Mississippi election statute does not require applicants to complete applications in the presence of the registrar. Miss. Code Ann. §25-5-303 (4) (Supp. 1980). The registrar in Port Gibson stated that there is no application form to fill out. Applicants must sign the registration book giving their name, address, and employment. Brezeale Interview.
[18] Evan Doss, tax assessor, Claiborne County, interview in Port Gibson, Miss., Dec. 2, 1980 (hereafter cited as Doss Interview).
[19] Ibid.
[20] Ibid.
[21] Ibid. Evan Doss' discussion on registration practices in Port Gibson pertains to Carole Brezeale, the current clerk, and two former city clerks. Evan Doss, tax assessor, Claiborne County, telephone interview, June 4, 1981; Kathleen Cade served from 1944 to 1976, and Evelyn Segrest served from 1976 to 1980. Kathleen Cade, former city clerk, telephone interview, June 19, 1981. Both former clerks were interviewed by Commission staff on Dec. 5, 1980.
[22] Ibid. Doss Interview.
[23] Ibid.
[24] Ibid.
[25] Ibid.
[26] Ibid.
[27] Miss. Code Ann. §23-5-303 (Supp. 1980).
[28] Doss Interview.
[29] Ibid.
[30] Ibid.

courtesy and decency" when registering all persons.[31] He noted that "hostile" questions discourage blacks from registering.[32] Blacks also feel intimidated in Port Gibson if they go to register and the police chief is present. According to the community leader, "Sometimes the police chief [sits] in city hall if there is a known registration drive before an election."[33] The respondent said that the police chief's presence "makes black people afraid to register. . . ."[34] While Mississippi law permits the appointment of bailiffs for the purposes of keeping the peace at elections,[35] the police chief's presence may have been intimidating to some blacks. One respondent indicated that since there is so much intimidation, registration of blacks would be more effective if conducted in black churches.[36]

In Johnson County, Georgia, respondents in Wrightsville, the county seat, complained that blacks are intimidated when they register to vote because of the presence of the white sheriff. According to a black community and religious leader, the sheriff "was at the registration office during much of the time that voter registration was taking place."[37] Blacks felt intimidated because they "are afraid of him."[38] Some blacks who learned that the sheriff was in the registration office were discouraged from registering, because they did not want "the sheriff to see them in the courthouse."[39] The community leader further explained that blacks feel that if the sheriff "thinks they are registering to get him out of office, there's no telling what he might do to them."[40]

The fear that some blacks have of the sheriff also discourages them from taking other blacks to register. In 1980 an older black citizen, who lives in Wrightsville and who had been involved in registration drives before, drove two blacks to the courthouse so they could register to vote.[41] She said that while she waited for them, "the sheriff and three other men in a car drove next to her parked car."[42] According to the respondent, the sheriff "stared" at her. "The way he looked scared me to death."[43] She said that the sheriff drove slowly around her car "a total of three times."[44] As a result of this experience, the respondent stated, "I ain't going back there [to the courthouse] anymore. . . .I'm too old to be beaten up."[45]

In Georgetown, South Carolina, one black community leader stated that the location of the registration office coupled with the hostile attitude of the former registrar has had an intimidating effect on blacks.[46] He noted that the location, behind the sheriff's office, has helped to discourage blacks from coming there to register.[47] He also argued that blacks are not likely to come to the registration office because, in the past, blacks did not feel welcome and the registrar had a "nasty" attitude towards them.[48] He further explained that "when one black learns from another black about the atmosphere [at the registration office], that black is discouraged from going to register."[49] This "word-of-mouth" communication about registration experiences adversely affects the number of blacks who register. The availability of alternative registration locations in Georgetown County during major registration drives, however, helped to make registration more accessible to blacks who may feel intimidated by the central registration location or who may be deterred from registering because of the attitude of the former registrar.

Access to Registration

Reports published since the passage of the Voting Rights Act have also indicated that one of the major

[31] James Miller, Urban League field officer and community leader, interview in Port Gibson, Miss., Dec. 2, 1980.
[32] Ibid. For the responses of Kathleen Cade and Evelyn Segrest, former city clerks in Port Gibson, to these statements, see appendix G of this report.
[33] Ibid. The police chief's office is not located in city hall, Evan Doss, tax assessor, Port Gibson, Miss., telephone interview, June 4, 1981 (hereafter cited as Doss Telephone Interview).
[34] Ibid.
[35] Miss. Code Ann. §23-5-109 (1972). The police chief has never served as a bailiff for registration or voting. Doss Telephone Interview. For the response of Harvey Jones, the police chief of Port Gibson, to these statements, see appendix G of this report.
[36] Doss Interview.
[37] E.J. Wilson, community and religious leader and advisor, Johnson County Justice League, interview in Wrightsville, Ga., Nov. 18, 1980 (hereafter cited as Wilson Interview).
[38] Ibid.
[39] Ibid.
[40] Ibid.
[41] Community leader, interview in Wrightsville, Ga., Nov. 18, 1980.
[42] Ibid.
[43] Ibid.
[44] Ibid.
[45] Ibid. For the response of Roland Attaway, sheriff of Johnson County, Georgia, to these statements, see appendix G of this report.
[46] Morris Johnson, community leader, interview in Georgetown, S.C., Nov. 4, 1980. Events discussed in Georgetown occurred during the appointment of Gordon Miller, Jr., who served as registrar until his retirement in December 1980. For the response of Gordon Miller, Jr., former chairman, Georgetown County Board of Registration, S.C., to these statements, see appendix G of this report.
[47] Ibid.
[48] Ibid.
[49] Ibid.

problems faced by minorities in getting registered is access to registration sites.[50] Many of these problems stem from the fact that registration is an urban, business-hour process that is, for the most part, inaccessible to rural and low-income people either because they cannot afford transportation to the registration location (usually the county courthouse) or because the registration office is closed before they can get there to register.[51] In 1977 over 44 percent of the black population in the South lived in nonmetropolitan areas and over 39 percent of this population was below the poverty level.[52] If registration is to be accessible to them, registrars will have to take more affirmative steps toward making the registration process more flexible.

In many cases, this has been a serious problem. For example, in *Lodge v. Buxton,* [53] the U.S. Court of Appeals for the Fifth Circuit affirmed a ruling by the U.S. District Court for the Southern District of Georgia that the at-large method of electing county commissioners in Burke County, Georgia, was unconstitutional. In that case, the court of appeals affirmed the district court's finding that the county had been "unresponsive to the particularized needs of the black community."[54] This included their continued resistance to making registration accessible to black voters in the 54 percent black county. According to the court:

> The county did, indeed, establish additional registration sites. But only after a pre-trial conference before and "friendly persuasion" by this court. The defendants' tepidity was further demonstrated by the fact that a period of 4 months was required to get the registration cards to the new sites, and that the new sites were operative only a short while before the registration period ended. Admittedly, the county commissioners recently approved a transportation system that should help solve access problems for some, but only after being prodded by the prosecution of this lawsuit. The commissioners' sluggishness in this respect is another example of their unresponsiveness to the black members of the community.[55]

In jurisdictions that Commission staff visited this was also found to be a problem. Inaccessible registration was reported in Johnson County, Georgia, where the registration rate for whites exceeded that for blacks by 32 percentage points in 1980.[56] In Johnson County, persons who want to vote in county elections must register at the county courthouse in Wrightsville. The office is open Monday through Friday from 9 a.m. to 5 p.m.[57] One black community leader reported that the location of the office is not convenient for persons who work outside of Wrightsville.[58] According to the respondent, "Many people do not have transportation to get to the registrar. Either they don't have a car or the car is at work."[59] A large percentage of the blacks in Johnson County are poor and, thus, would have difficulty in affording transportation to the registrar's office. According to the 1970 census, 65 percent of all black families in the county were below the poverty level while the countywide average among all families was 32 percent.[60] As a result of limited access to registration, eligible black voters are less able to register to vote.[61]

Blacks in Johnson County have attempted to solve this situation by requesting that the registrar take affirmative steps to increase black registration. In preparation for the August 1980 primary elections,a community leader attempted to increase black registration between May and June 1980.[62] He asked the county registrar to open the registration office on Saturdays and to appoint black deputy registrars.[63] The respondent stated that the county registrar "promised [to extend registration office hours to Saturdays] and then changed her mind."[64] According to the community leader, the registrar also said that there was no need to appoint black deputy registrars.[65] The respondent contacted the American Civil Liberties Union (ACLU) in Atlanta, Georgia, for assistance.[66] An ACLU attorney wrote to the registrar and called the Governor's office to obtain

[50] *Shameful Blight,* pp. 13–17; *Voting: Ten Years After,* pp. 71–78.
[51] Ibid.
[52] The black poverty rate is for all nonmetropolitan blacks. Most blacks (90.6 percent), however, who live in nonmetropolitan areas live in the South. The corresponding poverty rate for nonmetropolitan whites is 11.2 percent. U.S., Department of Commerce, Bureau of the Census, *Social and Economic Characteristics of the Metropolitan and Nonmetropolitan Population: 1977 and 1970,* series P-23, No. 75 (1978), table 3; U.S., Department of Commerce, Bureau of the Census, *Characteristics of the Population Below the Poverty Level: 1978,* series P-60, No. 124 (1980), table 4.
[53] Lodge v. Buxton, 639 F.2d 1376 (5th Cir. 1981).
[54] *Id.* at 1376.
[55] *Id.* at 1377, note 38.
[56] Registration rates were calculated on the basis of data supplied by the Office of Secretary of State, State of Georgia, and Office of Planning and Budget, Georgia State Data Center.
[57] Wilson Interview; Gail Bentley, county registrar, interview in Wrightsville, Ga., Nov. 20, 1980 (hereafter cited as Bentley Interview).
[58] Wilson Interview.
[59] Ibid.
[60] U.S., Department of Commerce, Bureau of the Census, *Census of Population: 1970,* vol. 1, part 12, pp. 518, 570. Where 1970 poverty figures are cited, 1980 census data are not yet available.
[61] Wilson Interview.
[62] Ibid.
[63] Ibid.
[64] Ibid.
[65] Ibid. Georgia law permits registrars to be appointed. Ga. Code Ann. §34-604(a) (Supp. 1978).
[66] Wilson Interview.

the necessary assistance for black citizens in Johnson County.[67] Subsequently, the registrar agreed to open the registration office for 2 half-days on Saturdays.[68] In addition, the registrar appointed three deputy registrars—two blacks and one white.[69] The function of the deputy registrars in Johnson County was limited, however. According to the registrar, their role was only to transport people to the county courthouse to register.[70] One community leader remarked that these persons "actually served no purpose,"[71] since they were not allowed to register people. One reason given for the deputy registrars being excluded from the total registration process in Wrightsville was that they had not received training.[72] In addition, the registration drive was nearly over when the deputy registrars were appointed.[73] The letter from the ACLU requesting the appointment of deputy registrars was written on June 2, 1980, but the board did not make the appointments until July 1980. This left almost no time for the deputy registrars to serve since the registration deadline for the August primary was July 7.[74]

In Auburn, Alabama (Lee County), blacks complained that they did not have access to the registration process because deputy registrars had not been appointed. Alabama law permits the appointment of deputy registrars,[75] and in May 1980 Governor Fob James wrote to all boards of registrars asking them "individually and collectively. . .[to] appoint those citizens who apply to become Deputy Registrars, in keeping with the spirit and intent of the law."[76] Prior to this, an NAACP official in Auburn had written letters to legislators requesting that the county registrar appoint deputy registrars.[77] The problem had been particularly acute since over 40 percent of all black families in this county are below the poverty level and often do not have the time or resources to make the trip to the registration office in Opelika.[78] Currently, there is no public transportation between Auburn and Opelika.[79]

In June 1980 the NAACP official and two other black citizens were deputized to conduct a registration drive in the black community.[80] According to one respondent, however, these drives have been sporadic and often terminated with little notice from the registrar.[81] In general, the respondent stressed that "registration is kept a very closed process."[82]

The overall result of this lack of access has been low black registration rates. Although it is impossible to calculate precisely registration rates by race, since Lee County does not tabulate this information, Margaret Latimer, professor of political science at Auburn University, has estimated that the black registration rate continues to trail that of whites.[83] In fact, she has estimated that in 1970, after a period of major increases in black registration, the white rate still surpassed the black rate by 25 percent.[84]

Butts County, Georgia, is a sparsely populated county in which 35 percent of the black families are below the poverty level.[85] Efforts to establish affirmative measures to boost registration among the predominantly poor black population have met with resistance from local registration officials. In March 1980 a black community leader requested assistance from the American Civil Liberties Union (ACLU) in his efforts to obtain greater access to registration.[86] According to the complaint, registration in the county is "only allowed at the tax commissioner's office located at the courthouse" in Jackson.[87] The community leader's concern was that many potential black voters work outside of Butts County and are

[67] Christopher Coates, ACLU Foundation, Southern Regional Office, Atlanta, letter to Raymond Carter, Board of Registrars of Johnson County, Ga., June 2, 1980 (hereafter cited as Coates Letter).
[68] Wilson Interview.
[69] Bentley Interview.
[70] Ibid.
[71] Wilson Interview.
[72] Ibid.
[73] Ibid.
[74] Coates Letter; Wilson Interview.
[75] Ala. Code §17-4-136, 17-4-158 (Supp. 1980).
[76] Fob James, Governor of Alabama, letter to all boards of registrars, May 6, 1980.
[77] Barbara Pitts, community leader and officer in the Auburn, Ala., NAACP, interview in Auburn, Ala., Sept. 12, 1980 (hereafter cited as Pitts Interview); Barbara Pitts, president, Auburn Alumnae Chapter, Delta Sigma Theta Sorority, Inc., letter to Bill Nichols, U.S. Congressman, Auburn, Ala., Sept. 20, 1979; Barbara Pitts, chairperson, Auburn political and social action committee, letter to Ted Little, State senator, Auburn, Ala., Feb. 20, 1980.
[78] Pitts Interview; U.S., Department of Commerce, Bureau of the Census, *Census of Population: 1970*, vol. 1, part 2, pp. 377, 401.
[79] Pitts Interview.
[80] Ibid.
[81] Ibid.
[82] Ibid.
[83] Margaret Latimer, assistant professor of political science, Auburn University, telephone interview, May 28, 1981.
[84] Margaret Latimer, "Voter Participation in the Rural South: Before and After the Voting Rights Act" (preliminary research report delivered at the 1976 annual meeting of the Southern Political Science Association, Atlanta, Nov. 4–6, 1976), p. 4.
[85] U.S., Department of Commerce, Bureau of the Census, *Census of Population: 1970*, vol. 1, part 12, pp. 512, 565.
[86] Christopher Coates, American Civil Liberties Union, Southern Regional Office, Atlanta, Ga., letter to A.L. Weavers, chief registrar, Butts County, Ga., Mar. 14, 1980 (hereafter cited as Coates Letter).
[87] Ibid.

unable to come to the courthouse to register during workdays.[88] He requested that "the Board of Registrars appoint some deputy registrars who would be authorized to register people at a designated site(s) located in the predominantly black residential area."[89] Under Georgia law, the board may appoint deputy registrars and designate alternate locations for registration.[90]

In response to a letter from the ACLU, the Butts County Board of Registrars, which consists of one black and two whites, maintained that the office at the courthouse "is adequately staffed" to handle registration responsibilities.[91] The board agreed, however, to extend the office's operation to "two Saturdays before the final day to register for the primary election and two Saturdays before the final day to register for the general election, from 8:00 a.m. to 4:00 p.m."[92] In addition, the board said that it would place "a special table" for registration "in the hallway" of the courthouse on these four Saturdays.[93] The board has planned to appoint another black deputy registrar who "will be teamed" with the present black registrar, and the two will operate the special table.[94] The board has also promised "suitable advance advertisement" of these "special" registration procedures.[95]

Despite these proposed remedies, Butts County still lacks any registration activities outside the county courthouse. In November 1980 the black registration rate trailed the white rate by over 37 percent;[96] 73.7 percent of voting age whites were registered, but only 36.2 percent of voting age blacks were registered.[97]

Purging and Reregistration

Problems related to purging and reregistration occur when the names of persons are removed without their knowledge from the registration list, or when voters have not been notified adequately that they must reregister to vote. Unless all of the technical provisions of these two procedures are communicated to all citizens, and the participation in them by minorities is encouraged, purging and reregistration activities can be discriminatory in effect.

In 1975 the State of Texas submitted a bill requiring purging and reregistration to the Department of Justice for preclearance under section 5 of the Voting Rights Act.[98] The bill required a purge of all currently registered voters and terminated the registration of those who failed to reregister by March 1, 1976.[99]

The Attorney General objected to the change. Although he found "nothing to suggest a discriminatory purpose to the purge,"[100] he did find a potentially discriminatory effect:

> With regard to cognizable minority groups in Texas, namely, blacks and Mexican-Americans, a study of their historical voting problems and a review of statistical data, including that relating to literacy, disclose that a total voter registration purge under existing circumstances may have a discriminatory effect on their voting rights. . . .Moreover, representations have been made to this office that a requirement that everyone register anew, on the heels of registration difficulties experienced in the past, could cause significant frustration and result in creating voter apathy among minority citizens. . . .[101]

Given these circumstances, the Attorney General stressed that "we are unable to conclude. . .that implementation of such a purge in Texas will not have the effect of discriminating on account of race or color and language minority status."[102]

In February 1977 officials in Lee County, Mississippi, submitted to the U.S. Attorney General, pursuant to section 5 of the Voting Rights Act, a request to change its reregistration procedures.[103] The Department of Justice objected to the submission because Lee County could not prove that the proposed change would not be discriminatory in purpose or effect. The objection letter stated that "black residents were not involved in the formulation of the reregistration plans; there are no black deputy registrars in the county, nor are blacks in any

[88] A.L. Weaver, Zella Mae Taylor, and Levi Ball, Butts County Board of Registrars, letter to Christopher Coates, American Civil Liberties Union, Southern Regional Office, Atlanta, Ga., Mar. 25, 1980 (hereafter cited as Weaver Letter).
[89] Coates Letter.
[90] Ga. Code Ann., §§34-604(a) 34-613(b), and 34-610(a)(d) (Supp. 1978).
[91] Weaver Letter.
[92] Ibid.
[93] Ibid.
[94] Ibid.
[95] Ibid.
[96] Registration rates were calculated on the basis of data supplied by the Office of Secretary of State, State of Georgia, and Office of Planning and Budget, Georgia State Data Center.
[97] Ibid.
[98] J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Mark White, secretary of state, State of Texas, Dec. 10, 1975.
[99] Ibid.
[100] Ibid.
[101] Ibid.
[102] Ibid.
[103] Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to W.P. Mitchell, attorney at law, Tupelo, Miss., Apr. 1, 1977.

other way intended to be involved in the conduct of the reregistration."[104] The county officials did not propose to send, by mail, a notice of the need for reregistration and planned to require "personal reregistration."[105] Reregistration would be made available at the county courthouse "only during regular work hours" and on "a small number of Saturdays."[106]

Conclusion

Registration for minorities should be no more difficult than it is for whites. However, given the depressed economic status of many minority communities, restrictive registration practices are especially burdensome. Because of past discrimination against minorities and the continuing economic dependence of minority communities, restrictive registration practices ensure limited minority access to the electoral process. If the registration process does not increase the percentage of minority voters, then minorities will remain permanently at a disadvantage. Their past exclusion from the election process, therefore, warrants additional consideration on the part of officials in providing flexible registration procedures.

The Commission found that the depressed economic status of minority communities coupled with other obstacles to registration continues to retard minority registration in jurisdictions subject to preclearance. In Emporia, Virginia; Port Gibson, Mississippi; and Johnson County, Georgia, minority respondents reported harassment during registration.

In addition, minority organizations and private citizens who have attempted to secure more flexible registration procedures reported lack of cooperation or hostility on the part of registration officials. In Johnson County, Georgia; Lee County, Alabama; and Butts County, Georgia, minority respondents reported problems in implementing more flexible registration procedures even though the appropriate State laws permitted these changes. In these jurisdictions, registrars have been reluctant to remedy problems of transportation and intimidation. Those organizations and persons that succeeded in getting alternative registration procedures had a difficult time convincing authorities of the need for them, and when changes were implemented, they did not fully satisfy minorities' concerns.

Some of these kinds of problems have been remedied by sections of the Voting Rights Act. Section 5 of the Voting Rights Act, for example, has been instrumental in preventing the implementation of registration practices and procedures that could discriminate against minorities in purpose or effect. In the case of purging and reregistration, for example, objections by the Attorney General to proposed purging procedures in Mississippi and Texas have forestalled implementation of devices that could potentially discriminate against minority registrants.

[104] Ibid.
[105] Ibid.
[106] Ibid.

Chapter 4

Voting

The Voting Rights Act of 1965[1] prohibits the use of barriers to voting such as literacy tests and provides for appointing Federal observers to monitor elections so that all persons can exercise their right to vote. As chapter 2 reported, the number of minorities who register, vote, and run for office has increased since passage of the act. Although it has been instrumental in helping to protect minorities' right to vote, practices implemented at the local level that serve to prevent minorities from voting have been reported. Such practices have included omission of the names of registered minorities from voter lists, failure to provide sufficient and convenient polling places that are accessible to minority citizens, harassment of minority voters by election officials, refusal to assist minority voters, inadequate instructions to minority voters, and discriminatory use of absentee ballots and other procedures.[2] In this study, the Commission was concerned whether the right to vote continues to be denied to minorities in such ways.

Polling Places

The location of the polling place is an important factor in determining whether minorities exercise their right to vote. When polling places are located in white communities, minorities have been extremely reluctant to vote because of their fear of harassment and intimidation at the polls.[3] The Commission was concerned whether polling place locations in the jurisdictions subject to preclearance continued to be inconvenient, inaccessible, or intimidating to minorities.

In Hopewell, Virginia, blacks are concerned about voting at the Veterans of Foreign Wars (VFW) Hall located in the white community. According to the president of the Virginia chapter of the Southern Christian Leadership Conference, there are no voting places in the black community.[4] Blacks are now voting in an organization's building whose membership is all white.[5] He said, "It's like having the polls at a country club."[6] He additionally alleged that the location of the polling place has had a negative effect on the black voter turnout.[7] According to the respondent, "If one precinct was in the black community, then black people might become more accustomed to voting."[8]

In February 1977 officials in Raymondville, Texas, submitted changes in the location of two polling places to the Attorney General pursuant to section 5 of the Voting Rights Act of 1965.[9] Although the Department of Justice did not object

[1] 42 U.S.C. §§1971, 1973 to 1973bb–1 (1976).
[2] U.S., Commission on Civil Rights, *Political Participation* (1968), p. 60; U.S., Commission on Civil Rights, *The Voting Rights Act: Ten Years After* (1975), p. 97 (hereafter cited as *Voting: Ten Years After*).
[3] Washington Research Project, *The Shameful Blight: The Survival of Racial Discrimination in Voting in the South*, (Washington, D.C.: 1972), pp. 80–82; *Political Participation*, pp. 67–69.
[4] Rev. Curtis Harris, president, Virginia chapter of the Southern Christian Leadership Conference, interview in Hopewell, Va., Jan. 12, 1981 (hereafter cited as Harris Interview).
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Ibid.
[9] Drew S. Days III, Assistant Attorney General, Civil Rights Division, Department of Justice, objection letter to Jerry Jacobs, superintendent, Raymondville Independent School District, Raymondville, Tex., Mar. 25, 1977, pp. 1–4.

to one of the polling place changes, it objected to the other change in location.[10] According to the Department it "received unrebutted representations indicating that the change in the location of the Precinct 1 polling place from City Hall to the American Legion Hall may have the purpose or effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group."[11] The Department reported that the polling place change "will result in a significant inconvenience for many Mexican American voters" who reside in portions of that precinct.[12] In its objection, the Department additionally wrote that "the American Legion Hall appears to be a place where many Mexican Americans feel unwelcome. Thus it is likely that the use of the American Legion Hall will have the effect of deterring participation by Mexican Americans. . . ."[13] The Attorney General objected to the proposed change since he was "unable to conclude, as he must under the Voting Rights Act, that. . .the use of the American Legion Hall as the polling place for Precinct 1 will not have the effect of discriminating on account of race, color, or membership in a language minority group."[14]

In April 1978 the city of New Orleans, Louisiana, submitted changes in five polling locations to the Department of Justice for preclearance under section 5 of the Voting Rights Act.[15] According to the Department, one of the changes was a polling place located in a precinct where 92 percent of the registered voters are black.[16] According to the Department of Justice, the new polling place was "approximately 16 blocks from the old polling place" and "located in another precinct."[17] The Department further noted that many of the voters, particularly the elderly, did not have automobiles and that there was "no convenient public transportation" to get to the new polling place.[18] Proof of the polling place's inaccessibility to minority voters occurred when city officials changed the polling place in this precinct prior to preclearing it and used the new polling place for a local election.[19] Persons were given only 2 weeks' notice of the polling place change, and the newspaper "contained the address of the old polling place for that precinct up until the day before the election."[20] The Department noted that, as a result of these factors, "a number of black registered voters who would otherwise have voted were unable to vote" in the April 1978 city election.[21] It concluded that "in this instance we have some evidence of actual rather than just potential [discriminatory] effect."[22] Although the Department of Justice precleared changes in four of the precincts, it was unable to conclude that the polling place change in the majority black precinct "does not adversely affect minority participation in the political process."[23]

In October 1979 the board of commissioners submitted a polling place change in the city of Taylor in Williamson County, Texas, to the Attorney General.[24] According to the Department of Justice, the polling place would be moved from the "centrally located" City Hall to the National Guard Armory which is located "approximately ten to twelve blocks north of City Hall in a predominantly white area."[25] The Department concluded that the new polling place would be "a significant inconvenience to the city's minority voters who appear to be concentrated in the southern and southwestern portions of the city. . .[and] may have. . .the effect of deterring participation by some minority voters in elections. . . ."[26] The Attorney General was unable to conclude that the polling place change would not have the effect of discriminating against minorities.[27]

In September 1980 a Hispanic city councilman, who represents a district in the Bronx, New York, that has a Hispanic population of over 50 percent, wrote to the executive director of the Bronx Board

[10] Ibid., p. 1.
[11] Ibid., p. 2.
[12] Ibid.
[13] Ibid. The Department of Justice did not object to the use of the American Legion Hall, if another polling place which would be more convenient to the Mexican Americans living in portions of the precinct were established.
[14] Ibid., pp. 2-3.
[15] Drew S. Days III, Assistant Attorney General, Civil Rights Division, Department of Justice, objection letter to Ernest L. Salatich, assistant city attorney, New Orleans, La., May 12, 1978, pp. 1-3.
[16] Ibid., p. 2.
[17] Ibid.
[18] Ibid.
[19] Ibid. pp. 1-2.
[20] Ibid.
[21] Ibid., p. 2.
[22] Ibid., p. 1.
[23] Ibid., p. 2.
[24] Drew S. Days III, Assistant Attorney General, Civil Rights Division, Department of Justice, objection letter to Weldon C. Berger, chairman, Board of Commissioners, Taylor, Tex., Dec. 3, 1979, pp. 1-3.
[25] Ibid., p. 1.
[26] Ibid. The Department noted that in the 1972 election held at City Hall, three minority candidates ran for office and 2,231 votes were cast. In 1973, when the Armory was used, there were no minority candidates and only 717 votes were cast.
[27] Ibid., p. 2.

of Elections inquiring about the change of the polling location in his district.[28] The councilman wrote that the new polling place is "nine blocks away" from the old one.[29] He further explained to Commission staff that some of the Puerto Rican and black "senior citizens" had complained to him that they would be unable to vote because of transportation problems in getting to the new location.[30] In a letter to the councilman, the executive director explained that the polling place could not be changed back to the old location because of the "time element involved with the coming local registration in October and the November [1980] election."[31] She also wrote that "due to the 1981 reapportionment, we will make every effort to change it next year."[32]

The location of the polling place is an important facet of the voting process. If minorities do not have access to a polling place because of lack of transportation or if they feel uncomfortable or intimidated there, they will be unable to vote. Voting becomes a burden for minorities when they must vote outside their community, especially when feasible alternatives exist. Minorities are also reluctant to vote in a building that symbolizes exclusion to them. The failure of white officials to provide a voting environment that is acceptable and accessible to all citizens has helped to discourage minorities from voting.

Assistance at the Polls

For many minority voters, the kind of assistance that they receive at the polls determines whether they will vote. If minority voters who do not speak English or who are illiterate receive inadequate assistance, they may become too frustrated and discouraged to vote or they may mark their ballots in such a way that they will not be counted. Before the Voting Rights Act of 1965 was amended, most States required that elections be conducted only in English.[33] The minority language provisions, which were added to the act in 1975, require that voting assistance be given in the applicable minority language.[34] In this study, the Commission was concerned whether minorities who needed assistance were able to vote, and if they received adequate assistance at the polls.

According to Texas State law, a person who either is on the registration list or has a registration card at the polls can vote.[35] In some jurisdictions in Texas, however, minorities are challenged or denied the ballot even though they meet the requirements of the law. In one instance, a minority poll watcher in the city of Hondo, in Medina County, Texas, alleged that the election judge's decision to challenge a voter's eligibility or deny the ballot to a voter was based on the race and ethnicity of the voter. According to her, more Hispanics are challenged at the polls than whites.[36] The respondent alleged that in 1979 when she served as a poll watcher, the election judge at her precinct would "challenge more Mexican American voters, especially those who ran for office."[37] She cited an example, however, of how an Anglo was treated differently even though there was uncertainty about his residency:

> An Anglo had been living in San Antonio (after moving from Hondo). He came back to Hondo to vote because he said his parents still lived here (in Hondo). He did not have a registration card but he remained on the voter list. He was allowed to vote despite the question over his residence.[38]

In one instance, a well-known Hispanic community leader in Medina County explained how he was challenged by election officials:

> When I went to vote I didn't have my registration card but my name was on the list. One [official] man knew me and knew my name was on the list. Another man kept asking him, "Are you sure? Are you sure?"[39]

He continued, "They [the election officials] don't bother me, but a lot of people can be scared off easily. It's those. . .hassles you go through and unless you are persistent. . .[you] are scared off."[40]

In Bexar County, Texas, a voter at Precinct 356 was told during the November 4, 1980, election that

[28] Gilberto Gerena-Valentin, councilman, New York City, letter to Bea Berger, executive director, Bronx Board of Elections, Sept. 10, 1980 (hereafter cited as Gerena-Valentin Letter); Gilberto Gerena-Valentin, councilman, telephone interview, May 21, 1981.
[29] Gerena-Valentin Letter.
[30] Ibid.; Gilberto Gerena-Valentin, councilman, telephone interview, May 21, 1981.
[31] Beatrice Berger, chief clerk, Bronx Borough Office, letter to Gilberto Gerena-Valentin, councilman, New York City, Sept. 16, 1980. The old polling place had been used since June 1979.
[32] Ibid. For the response of Beatrice Berger, chief clerk, Bronx Borough Office, to these statements, see appendix G of this report.
[33] *Voting: Ten Years After*, p. 117.
[34] 42 U.S.C §§1971, 1973–1973bb–1 (1976) at 1973b(f)(1). A complete discussion of the provisions can be found in chapter 7.
[35] Tex. Elec. Code Ann. arts. 8.07, 8.08, 8.09 (Vernon Supp. 1980).
[36] Irma Torres, community leader and former poll watcher, interview in Hondo, Tex., Dec. 18, 1980 (hereafter cited as Torres Interview).
[37] Ibid.
[38] Ibid.
[39] Lucio Torres, community leader, interview in Hondo, Tex., Dec. 18, 1980.
[40] Ibid. For the responses of Henry Stiegler and V.H. Neumann, election judges, Hondo, Tex., to these statements, see appendix G of this report.

the marked sample ballot he was carrying could not be taken into the voting booth.[41] The voter insisted that doing so was his right and asked that the election official call the Texas Secretary of State's office for clarification. Staff there confirmed that a self-marked ballot may be taken into the voting booth. The voter was only allowed to vote after signing a sworn statement that the sample ballot was self-marked.[42]

An incident such as that reported in Bexar County might have discouraged a less well-informed person from voting. Testimony presented by State Representative Paul Moreno of El Paso, Texas, at a hearing on voting irregularities supports this conclusion. Representative Moreno testified that he knew of many cases in which voters with marked sample ballots were not allowed to vote.[43] He stated that the potential voters "have their ballots in their pockets and at times they are searched. . .and if something is found. . .they are ejected."[44] In response to Representative Moreno's statement, Shad Jefferies, director of special projects for the secretary of state's election division, stated the position of the secretary of state's office:

> . . .those people who were ejected. . .if they had themselves marked those sample ballots or whatever, then they are entitled to keep that with them as long as they marked it themselves. They should not be thrown out, or turned away from the polls for that reason.[45]

According to an Arizona State representative, in Maricopa County, "[e]lection officials are not trained to explain to [Mexican American] people who are not on the registration list that they may be assigned to another precinct."[46] He said, "They just tell them they are not on their list and the people leave."[47] Election day observers also reported that on November 4, 1980, Hispanic voters at one precinct in Phoenix, Arizona, were not told what their alternatives were if they were not on the registration list:[48]

> Many [Hispanic] voters were turned away because they were not on the registrar's list. . . .People were not told what they could do to vote, only that they could not vote. . . .[The] Election judge was not attentive and did not try to explain to minority voters who were not on the registrar's list what they could do to vote. . . .[49]

Problems related to bilingual assistance at the polls also were reported. A community leader in Atascosa County, Texas, observed that when Mexican Americans who could not read or write went to vote in the primary election, the election judges refused to let the two Hispanic clerks at Precinct 20 assist them.[50] One Hispanic clerk who served as an election clerk at Precinct 20 during the May 3 Democratic primary said, "No attempt is made to try to assist them, unless. . .I just take it upon myself to get up and go help them regardless of whether [the election judge] like[s] it or not."[51] She continued:

> When we are allowed to help somebody, they will send somebody with us, an Anglo. Then they will stand there and say, "Well, you are supposed to read the ballot in English." If the person doesn't understand, how can you possibly read the ballot in English. . .?[52]

The other Hispanic election clerk, who was assigned to record the voters' names on the poll list, also noted that there were only two bilingual clerks at Precinct 20 to assist "the Mexican American people coming up to vote. . . .A lot of them did not

[41] Election day observation by the U.S. Commission on Civil Rights' Southwest Regional Office staff, Precinct 356, Lion's Field Center, 2900 Broadway, San Antonio, Tex., Nov. 4, 1980.

[42] Ibid.

[43] Southwest Voter Registration Education Project, *An Inquiry Into Voting Irregularities in Texas*, hearing, Austin, Tex., Oct. 22, 1980, p. 51. (hereafter cited as *An Inquiry Into Voting Irregularities in Texas).*

[44] Ibid.

[45] Ibid., p. 52. For the response of Beverly B. Wallace, election judge, Precinct 356, Bexar County, Tex., to these statements, see appendix G of this report.

[46] Earl Wilcox, State representative, interview in Phoenix, Ariz., Nov. 4, 1980.

[47] Ibid. According to the instructions provided election workers in Maricopa County, "No person shall be allowed to vote in your precinct polling place unless he is qualified in one of the following ways: (1) His name appears on the Precinct Register; (2) He surrenders a County Recorder's Certificate authorizing the addition of his name to the Precinct Register; or (3) He qualifies to vote a Questioned Ballot as detailed in the Questioned Ballot Voter section of these instructions. When a person's name is not found on your precinct register, direct this person to the 1980 Maricopa County Precinct Map and Election Information Guide to locate the proper precinct of his residence. If he is at the wrong polling place, give him the address of the polling place in his precinct from the list of polling place addresses furnished in your precinct supplies. If he resides in your precinct and qualifies to vote a Questioned Ballot, follow the Questioned Ballot Voter instructions. If a solution is not found in any of these ways, refer this person to the Elections Department. . . ." *Precinct Election Board Instructions, 1980,* Maricopa County Department of Elections, pp. 2–3.

[48] Election Day observations by U.S. Commission on Civil Rights staff at Lincoln School, Precinct No. 1251, Phoenix, Ariz., Nov. 4, 1980 (hereafter cited as Election Day Observations–Phoenix). The observers visited a predominantly Hispanic precinct. While they were present, the only voters to come to the precinct were Hispanics.

[49] Election Day Observations–Phoenix. For the response of David J. Nicol, director of elections, Maricopa County, Ariz., to these statements, see appendix G of this report.

[50] Abraham Saenz, Jr., community leader, interview in Pleasanton, Tex., Dec. 17, 1980 (hereafter cited as Saenz Interview).

[51] Minnie B. Leal, testimony, *An Inquiry Into Voting Irregularities in Texas*, p. 167 (hereafter cited as Leal Testimony).

[52] Ibid., p. 168.

understand the English language and they were asking for assistance."[53] Realizing that it was difficult to carry out her assigned duties as well as assist the Hispanic voters, the clerk approached the election judge about more bilingual help. According to the clerk, the judge "kind of got upset and. . .made the comment. . .that as far as she was concerned, if they did not speak the English language, if they didn't understand it, they didn't have the right to vote."[54]

In Medina County, Texas, a former poll watcher at the last city election in Hondo (April 1980) noticed that some of the Mexican American voters were not being assisted.[55] When she brought it to the attention of the election worker, he warned her that, as a poll watcher, she could say nothing.[56] She said that the election worker told her, "I don't care what you people want. You [Mrs. Torres] are not supposed to say anything."[57]

Parts of New York City are covered by section 5 of the Voting Rights Act. One councilman indicated that more bilingual workers are needed to assist Spanish-speaking voters in the Williamsburg section of Brooklyn, New York (District No. 27).[58] Another Hispanic councilman in a Bronx, New York, district (no. 11) stressed that there are seldom bilingual election officials who work at the polls.[59] The Hispanic director of a Bronx housing clinic concurred that in his Bronx district (no. 6), "There were no Spanish-speaking election officials working at the polling places"[60] to provide assistance to non-English-speaking persons.

Although many formal barriers to voting (such as tests or devices)[61] have been eliminated, lack of adequate assistance can act as a barrier to illiterate voters.[62] The quality of that assistance is one of the major factors that determines whether illiterate minority voters may vote.[63] Minority persons who are illiterate cannot vote or vote effectively if they receive assistance from an intimidating, insensitive poll worker, or if there are restrictive rules that govern the assistance procedure.

In 1979, according to the Department of Justice, House Bill No. 854 was passed by the Mississippi Legislature.[64] It proposed to change the State's system of providing assistance to voters.[65] Under the old law, illiterate voters could receive assistance from the person of their choice, whether or not that person was a registered voter in the same precinct. One individual could assist any number of voters, and no other person was permitted or required to be present when assistance was given.[66] The bill required that the person giving assistance be a registered voter of the same precinct of the persons receiving assistance, that one person could assist no more than five others, and that the poll manager must be present while assistance was given.[67]

In May 1979 the bill was submitted to the Department of Justice for preclearance under section 5 of the Voting Rights Act.[68] In July 1979 the Attorney General wrote that he was "unable to conclude that the proposed system of assistance does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color."[69] The Department also noted that it is common for more than five black voters to receive assistance from the same person and that there is no need for the person giving assistance to reside in the same precinct as the voters receiving assistance.[70] The Department of Justice noted that the vast majority of voters who have requested voting assistance in Mississippi are black and their voting

[53] Maria Elena Reyna, testimony at *An Inquiry Into Voting Irregularities in Texas*, p. 170 (hereafter cited as Reyna Testimony).
[54] Ibid., p. 172. The minority language provisions of the Voting Rights Act require that assistance should be given to persons who do not speak English. The official's insensitivity to that need was not in accord with the spirit of the law. 28 C.F.R. §55, 20(b) (1980).
[55] Torres Interview.
[56] Ibid. Under Texas law, the poll watcher is only at the polling place to observe the election and is not to give any advice to voters or hold any conversation with any voter. The poll watcher is not permitted to converse with the judges or clerks regarding the election as it progresses except for the purpose of calling to the attention of the election officers fraud, mistake, or irregularity. Tex. Elec. Code Ann., art. 3.07 a–h (Vernon Supp. 1980).
[57] Torres Interview. For the response of Henry Stiegler, election judge, Hondo, Tex., to these statements, see appendix G of this report.
[58] Luis Olmedo, councilman, Brooklyn, interview in New York City, Mar. 3, 1981.
[59] Gilberto Gerena-Valentin, councilman, New York City, interview in New York City, Mar. 5, 1981.
[60] Jose Espinosa, director, East Tremont Housing Clinic, Bronx, interview in New York City, Mar. 3, 1981.
[61] 42 U.S.C. 1973a(b) (1976).
[62] *Voting: Ten Years After*, p. 121.
[63] Ibid., pp. 121–24.
[64] Drew S. Days III, Assistant Attorney General, Civil Rights Division, Department of Justice, objection letter to A.F. Summer, attorney general, Mississippi, July 6, 1976, p. 1 (hereafter cited as Mississippi Letter).
[65] Ibid.
[66] Ibid., p. 2.
[67] Ibid.
[68] Ibid., p. 1.
[69] Ibid., pp. 1–2. In June 1979, the Attorney General did not initially object to the proposed change in Mississippi's voter assistance law. After reexamining the proposal, the Attorney General found the bill unacceptable.
[70] Ibid.

rights would be adversely affected by the bill's requirements.[71]

In November 1979 Louisiana enacted a law that requires illiterate persons who want assistance at the polls to present an affidavit to the registrar (in person or by mail) explaining the reasons for the assistance.[72] Without the affidavit on record, these voters cannot receive assistance at the polls. The law does not permit them to file an affidavit at the polling location if they have not filed previously. The inflexibility of the law places a great burden on voters who wish to obtain assistance to vote, by requiring them to understand a legal procedure and then penalizing them if they do not understand it.

In St. Landry Parish, Louisiana, a respondent explained that many blacks who needed assistance in the November elections were not aware of the new requirement.[73] When they went to vote and asked for assistance, they were not allowed to vote because they did not have the affidavit on file.[74] According to another respondent, such voters did not have transportation to get to the courthouse to find out more about the new procedure.[75] Indirectly, the new law prevented "a lot of [black] people from voting."[76] The Louisiana law has had the effect of preventing minority voters who are elderly or illiterate from voting because they are unable to understand it or because it is difficult for them to comply with it.

Harassment and Intimidation

Harassment and intimidation at the polls—blatant activities aimed at deterring people from voting—also prevent many minorities, especially those who are elderly and less educated, from exercising their right to vote. In some jurisdictions that were studied, minorities have been threatened with economic and physical reprisals for voting or for assisting others to vote, or they have been intimidated by insensitive white election workers. Such conditions discourage minorities from voting, undermining the intent of the Voting Rights Act.

Intimidation of voters was reported in Johnson County in Wrightsville, Georgia. A well-known black community leader who assisted black voters reported an incident in which blacks were accused by the election official of "blocking the entrance to the courthouse," which is the polling place.[77] When he explained that he and the other blacks were standing an acceptable distance from the polling place, the election official called the State troopers to get them to leave. The respondent continued standing in front of the courthouse, and the election official called the sheriff and State troopers again. The respondent said that Federal observers from the Department of Justice who were monitoring the activities told the official that he was not breaking the law. "Later, some white men in a truck stopped in front of the polling place. Guns were visible in the truck."[78] They began heckling black people at the polls. The blacks left the scene (some of them potential voters) while whites were not harassed by the official or the white men.[79] An incident such as the one in Wrightsville discourages minorities from voting.

In Atascosa County, Texas, two former Hispanic candidates for county positions said that Mexican Americans had reason to fear economic reprisal. According to one of the candidates, "People are just too scared. I don't blame them. If they vote for someone that their boss doesn't want them to [and he finds out], they will lose their jobs."[80] According to one of the two Hispanic election workers in Atascosa County, "the attitude among the personnel working towards the Mexican Americans is bad. They treat them bad."[81] Another community leader said, "Some [Mexican Americans] don't vote because there are not enough [Mexican American] clerks to help. If we had more Mexican American clerks and [election] judges, Mexican Americans would feel more comfortable about voting."[82]

In the city of Pearsall in Frio County, Texas, an official stressed that one white election judge at Precinct 2 makes things more difficult for the

[71] Ibid. The Department reported that, according to the 1970 census, blacks constituted 31 percent of Mississippi's residents aged 25 and over. Seventy-one percent of these persons had completed less than 5 years of formal education.
[72] La. Rev. Stat. Ann. §18.564 (West Supp. 1981).
[73] James Bush, community leader, interview in LeBeau, La., Dec. 11, 1980 (hereafter cited as Bush Interview).
[74] Ibid.
[75] Ron Gilbert, community leader, interview in LeBeau, La., Dec. 11, 1980.
[76] Bush Interview.
[77] Rev. E.J. Wilson, community and religious leader and advisor, Johnson County Justice League, interview in Wrightsville, Ga., Nov. 18, 1980 (hereafter cited as Wilson Interview).
[78] Ibid.
[79] Ibid.
[80] Saenz Interview.
[81] Leal Testimony, p. 167.
[82] Jose Torres, president, Atascosa County Council-League of United Latin American Citizens, interview in San Antonio, Tex., Dec. 17, 1980.

Hispanics voting and as a result they are not comfortable at the polls.[83] The official stated that the negative attitude of election judges easily discourages people from voting.[84] According to a paralegal in Frio County, "Mexican Americans want more Mexican American election judges. They do not feel at ease at the polls."[85] A county commissioner reiterated that there have been complaints that "they [election judges] were being sarcastic to the [Mexican American] voters and [have] tried to discourage them [from voting]."[86] In addition, an Hispanic justice of the peace explained:

> [One of the] biggest obstacles was intimidation at the polls. It is hard for people with little education. . .They are easily scared or discouraged. . . .[87]

Minority Election Officials

Minorities believe that more minority election workers would decrease the amount of intimidation.[88] In 1980, however, the number of minority election workers was inadequate in some areas with a large minority population. According to one of the Hispanic poll workers at Precinct 20 in Atascosa County, Texas, there were only 2 Hispanic poll workers out of 14 at this precinct where "half of the people that come to the polls are Mexican American."[89] For the primary and general elections in 1980, Atascosa County had 17 election judges; none was Hispanic.[90] In Medina County, Texas, from 1954 to 1980 there were a total of 351 presiding judges appointed to conduct elections by the county commissioners' court; only 5 (1.4 percent) were Hispanic, even though they are nearly 50 percent of the county population.[91] In Frio County, Texas, a justice of the peace commented that at one precinct that is predominantly Hispanic there was not one Hispanic or bilingual poll worker during the November 1980 election.[92] At another predominantly Hispanic precinct, there was only one bilingual clerk.[93] One of the county commissioners said, "Anglos from distant areas were appointed to man voting boxes in predominantly Chicano areas."[94] According to 1980 census data, Port Gibson, Mississippi, has a black population of 63.4 percent. For the 1980 elections there were four poll managers chosen by the election commission, but only one was black.[95] The lack of minority election officials adversely affects the voting participation of blacks and Hispanics who become discouraged from voting when they believe that they will be treated in a discriminatory manner or assisted inadequately by white election workers at the polls.

Absentee Voting

Absentee voting is a procedure that enables persons in the military, students, and other people who may not be able to go to the polls to exercise their right to vote. The absentee ballot is supposed to be a viable alternative to voting at the polls, but in some jurisdictions, it has been used to undermine the intent of the Voting Rights Act.

In 1980 the *Atlanta Constitution* published a series of articles on the Voting Rights Act. In one article, absentee ballot abuse in Taliaferro County, Georgia, was reported.[96] The county has a 71.6 percent black population, but there are no blacks on the county commission.[97] Blacks have been candidates for positions in the county, but have lost because of the "apparent abuse of absentee ballots."[98] According to the article:

> Here in Taliaferro County, the use and apparent abuse of absentee ballots have been the major tool of the dominant white political establishment to dilute the impact of the black vote ever since voter registration drives and the first attempts by blacks to gain public office more than a decade ago.[99]

The article noted that in the 1980 primary election, "absentee ballots accounted for more than one-third of the 1,545 votes cast."[100] The article reported abuse of absentee voting by white candidates who "regularly hand-deliver absentee ballots to poor and

[83] Frank Robledo, justice of the peace, Precinct 1, interview in Pearsall, Tex., Dec. 16, 1980 (hereafter cited as Robledo Interview).
[84] Ibid. For the response of Mrs. John Stacy, election judge, Precinct 1, to these statements, see appendix G of the report.
[85] Anita Garza, paralegal, Texas Rural Legal Aid, interview in Pearsall, Tex., Dec. 17, 1980.
[86] Adolfo Alvarez, county commissioner, interview in Pearsall, Tex., Dec. 16, 1980 (hereafter cited as Alvarez Interview).
[87] Robledo Interview.
[88] Saenz Interview.
[89] Leal Testimony, p. 166.
[90] Elidia Sugura, county clerk, Atascosa County, Tex., telephone interview, Feb. 6, 1981; May 1, 1981. For the response of O.B. Gates, county judge, Atascosa County, Texas, to these statements, see appendix G of this report.
[91] Statistics were provided by the Mexican American Legal Defense and Educational Fund, San Antonio, Tex., Apr. 20, 1981.
[92] Robledo Interview. The precinct that is discussed is Voting Box 1.
[93] Ibid. The precinct that is discussed is Voting Box 8.
[94] Alvarez Interview.
[95] Carole Brezeale, city clerk, interview in Port Gibson, Miss., Dec. 5, 1980.
[96] "Trouble in Taliaferro County: Absentee Ballot Abuse Keeps Whites in Office," *The Atlanta Constitution*, Dec. 9, 1980, pp. 1-A-10-A (hereafter cited as "Trouble in Taliaferro.")
[97] Ibid., p. 1-A.
[98] Ibid., p. 10-A.
[99] Ibid.
[100] Ibid.

illiterate black voters and stand by the voters while the ballots are filled out."[101] According to the newspaper:

> The candidate or a helper brings along applications for absentee ballots on visits to households. Potential voters are asked whether they wouldn't like the candidate or a helper to deliver the ballot later. The form then is filled out so that the absentee ballot is mailed not to the voter, but to the candidates and their helpers. Then the candidate or an aide drives the ballot out to the voter and, if possible, waits while it is filled out—or in the case of illiterates, offers assistance.[102]

Georgia law requires that a person wishing to vote absentee must apply for an absentee ballot (either by mail or in person) with the registrar and write on the application the address where the ballot should be mailed.[103] One white law enforcement official mailed the absentee ballot applications to the registrar and placed his address on them. He then delivered the ballots to the black voters.[104] In most cases, he filled out the ballots for black illiterate voters.[105]

The *Constitution* also noted that after 1966 a "greater number" of absentee ballots have been filed by persons—mostly whites—who live outside the county.[106] This maneuver has been possible because of the Georgia law which states that if a voter is out of the county temporarily, a relative 18 years of age or older living in the county "upon satisfactory proof of relationship" can apply for the absentee ballot.[107] However, the law does not define "temporary."[108] This has allowed persons who have moved out of the county, "temporarily," to receive absentee ballots and still vote in Taliaferro elections.[109] The article concluded:

> To the extent that whites outside the county continue to vote there, the black voting majority is diluted. . .and everyone here says that white incumbents have been effective at winning black votes by delivering absentee ballots and offering assistance to poor and illiterate voters.[110]

According to Texas law,

> Qualified voters. . .make application for an absentee ballot on the ground of expected absence from the county of their residence on election day, and who expect to be absent from the county during the clerk's regular office hours. . . .Applications made. . .may be mailed either from within or without the county of the voters' residence, but in every case the ballot must be mailed to the voter at an address outside the county. . . .[111]

In the city of Pearsall, in Frio County, Texas, there is a large number of Mexican American migrant or seasonal workers who may not be able to vote in person on election days. Some of these workers have applied for absentee ballots. A Hispanic county commissioner reported, however, that "in absentee voting, the registrar has been very derelict in sending out the [absentee] ballot[s]. [F]or Mexican Americans [the seasonal workers] they are sent out very slowly."[112] He said that the registrar is not derelict "in mailing out absentee ballots to Anglos."[113]

Before the general election in November 1980, an Hispanic county commissioner said that he knew personally that two Mexican American seasonal workers applied for absentee ballots with the registrar, because they would be out of Pearsall (Frio County) on election day.[114] One of the applicants, who would be in Minnesota on election day, had not received his absentee ballot. Persons related to the applicant brought the ballot, which was mailed to his Pearsall, Texas, address, to the commissioner and his wife. The commissioner's wife said, "I took the sealed envelope, made a copy of the [front side of the] envelope, and put the date on it. I sent it to Minnesota by registered mail."[115] When the commissioner called the registrar and asked her why the absentee ballot was mailed to Pearsall instead of Minnesota, she told him that there had been a mistake (in the mailing). The commissioner said "that this is the kind of response that Mexican Americans hear when something like that happens."[116]

The use of absentee ballots is supposed to be a viable alternative for persons who want to exercise their right to vote *in absentia.* But the abuse of the absentee ballot in Taliaferro County, Georgia, and the inflexibility of its use as a voting alternative in Frio County, Texas, renders the absentee ballot a procedure that can deny minorities access to the political process.

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[101] Ibid.
[102] Ibid.
[103] Ga. Code Ann. §34-1402(a) (Supp. 1978).
[104] "Trouble in Taliaferro," p. 10-A.
[105] Ibid.
[106] Ibid.
[107] Ga. Code Ann. §34-1402(a) (Supp. 1978); "Trouble in Taliaferro," p. 10-A.
[108] *Id.*
[109] "Trouble in Taliaferro," p. 10-A.
[110] Ibid.
[111] Tex. Elec. Code Ann. art. 5.05, subd. 1(c)(ii) (Vernon Supp. 1980).
[112] Alvarez Interview.
[113] Adolfo Alvarez, county commissioner, Frio County, Texas, telephone interview, May 25, 1981 (hereafter cited as Alvarez Telephone Interview).
[114] Ibid. The workers planned to be in Minnesota and New York City, respectively.
[115] Lupe Alvarez, community leader, Telephone Interview, May 25, 1981.
[116] Alvarez Telephone Interview; for the response of Mona Hoyle, county clerk, Frio County, Tex., to these statements, see appendix G of this report.

Vote Buying

In 1976 a black candidate, Gilbert Austin, ran for a position on the St. Landry Parish, Louisiana, School Board, representing a predominantly black district. Mr. Austin ran against another black and a white candidate. The outcome showed that the white candidate won the election. Mr. Austin was told, however, that many blacks had been bribed into voting for the winner.[117] After securing further evidence of "vote buying," the U.S. Department of Justice filed suit against the St. Landry Parish School Board.[118]

In *U.S. v. St. Landry Parish,* Bobby Dupre, a former white school board member, and three poll commissioners resigned as a result of engaging in vote buying during the 1976 school board elections in St. Landry Parish.[119] The district court stated that the defendants' conduct constituted "a violation of Sections 1971(a) and 1973 of Title 42 of the United States Code and the 14th and 15th amendments of the Constitution of the United States since said scheme had the purpose and effect of denying or abridging the right to vote on account of race."[120]

To ensure his election, Mr. Dupre instructed drivers to bring certain blacks to the polls. These blacks then received assistance in voting from the three poll commissioners who were defendants in the case, despite the fact that the blacks neither needed assistance nor gave a preference for a candidate. The blacks were then given tokens, which were later redeemed for money.[121]

A consent decree was entered in the case. The district court declared the February 21, 1976, election null and void (Mr. Dupre resigned on November 27, 1979), and ordered a special election to be held on April 5, 1980. Mr. Austin won the special election.

[117] Gilbert Austin, school board member, St. Landry Parish, La., interview in Opelousas, La., Jan. 30, 1981.
[118] United States v. St. Landry Parish School Board, No. 76-1062 (W.D. La., Dec. 5, 1979).

Conclusion

The Commission found that in jurisdictions subject to preclearance, barriers and practices still exist which adversely affect minority access to the polls. In Hopewell, Virginia, and in Williamson County, Texas, the location of polling places was especially burdensome for minority voters. These polling places were either inaccessible to minority voters or located in places that may be intimidating to them.

In addition to the location of polling places, the lack of effective assistance at the polls may also deprive minorities of their right to vote. In jurisdictions in Texas and New York, language minorities reported inadequate assistance, which had the effect of discouraging them from voting. Furthermore, the States of Louisiana and Mississippi have enacted or attempted to enact legislation which places additional burdens upon minority voters who are illiterate.

The Commission also found that minority voters are still subject to intimidation at the polls. In Wrightsville, Georgia, Atascosa County, Texas, and Frio County, Texas, minority respondents reported incidents in which they were harassed or intimidated in their efforts to vote. Finally, the use of the absentee ballot in Taliaferro County, Georgia, and Frio County, Texas, also denied minorities access to the political process.

There are many facets of the Voting Rights Act, but one of the most important tests of its effectiveness is at the polls. If minorities go to the polls and find election workers who are unwilling to assist them, if they are forced to vote at inconvenient polling places, if they are intimidated and harassed at the polls, and if abuses in absentee voting and vote buying persist, they will be unable to exercise their right to vote.

[119] *Id.*, slip op. at. 1-3.
[120] *Id.*, at 1.
[121] *Id.*, at 3.

Chapter 5

Fair Representation and Candidacy

Since passage of the Voting Rights Act, the number of minority elected officials has increased substantially. As chapter 2 noted, however, serious underrepresentation of minorities in elected positions persists. Chapters 3 and 4 showed that a variety of impediments prevent minorities from registering and voting. Underrepresentation of minorities in elected office can also be attributed to election systems, voting rules, and methods of redistricting, as well as to practices that minority candidates may confront such as harassment, intimidation, and lack of access to voters.

Boundary Formation

Both the method through which officeholders are elected and the exact boundaries of the jurisdictions they represent can affect the opportunities of minorities to be elected.[1] For example, in any town, city, or county, each member of the local governing body can be elected by all of the voters (elected at large) or by only the voters of a particular district (elected by single-member district). In a town of 10,000 registered voters with a governing body composed of 10 members, this would mean that all 10,000 voters could cast ballots for all 10 members of the governing body, or that the voters, grouped into 10 districts of approximately 1,000 voters each, would be able to elect one member of the governing body to represent their particular district.

In certain circumstances, the consequences for minority representation of these different voting methods can be significant. If, for example, the town contains a majority of white voters, who consistently refuse to vote for minority candidates (that is, there is racial bloc voting), an at-large election system has the effect of denying minority voters the opportunity to elect a minority to office. In contrast, elections from single-member districts, some of which contain more than 50 percent minority voters, would make minority representation on the governing body much more likely.

Combinations of these voting systems are also possible. Members of the town governing body could be elected from a mixed system, using at-large and district elections. For example, of the 10 members of the governing body, 2 could be elected at-large and 8 could be elected from single-member districts. Given racial bloc voting, the opportunity for minorities to be elected under this mixed system would depend upon the proportion of minority voters in each of the eight districts.

In addition, the town council could be divided into multimember districts in which more than one member of the town governing body is elected from each district. For example, two districts could elect five members each. Again, the opportunity for minorities to be elected would depend upon the percentage of minority voters in each of the two

[1] The following election systems and voting rules have also been explained in a similar format in U.S., Commission on Civil Rights, *The Voting Rights Act: Ten Years After* (1975), pp. 204–10.

districts. If each district reflected the overall racial proportions of the town (for example, 40 percent minority, 60 percent white), this opportunity would be limited. If one district, however, had 60 percent minority voters and the other 15 percent minority voters, the opportunities for minority representation, at least in the former district, would be enhanced.

When political officials are elected by districts, the opportunities for minority representation depend greatly on the way district lines are drawn. Jurisdictions have diluted minority voting strength through practices such as dividing a geographical concentration of minorities among several districts, all predominantly white, or overpopulating one district with minorities under circumstances in which more than one district could have had substantial minority populations. Although the districts may technically comply with the one-person, one-vote principle (that is, equalizing population among districts), the way the districts are drawn may raise questions as to the jurisdictions' intent, especially if they are neither compact nor contiguous. For example, with 10 districts in a hypothetical town of 10,000 that is 40 percent minority, district lines could be drawn so as to preclude the possibility of any minority representation.

Changing the boundaries of the jurisdiction also can affect the opportunities for minority representation. For example, by annexing predominantly white areas, a jurisdiction can increase its proportion of white voters. The consolidation of two jurisdictions also can have this effect. In the context of an at-large system and a high degree of racial bloc voting, these types of changes would reduce the opportunities for minority representation in the enlarged jurisdiction, since the minority percentage of the total population would decrease.

Voting Rules

Equally important in determining the opportunities of minorities to be elected are a variety of voting rules. In the context of a particular election system (for example, at-large, mixed, single-member, multimember districts), there are also voting rules that govern the way candidates are elected and the way citizens may vote. For example, jurisdictions may require winning candidates to receive a majority rather than a plurality of the vote. If no candidate receives a majority, the top two candidates face one another in a runoff.

The effect of this rule upon minority candidates can be significant, especially in jurisdictions where whites are in a majority and consistently refuse to support minority candidates. In a jurisdiction with 4,000 minority voters and 6,000 white voters, a majority vote rule would inevitably force a minority candidate to rely upon white voters to be elected. If one minority candidate and several white candidates run, and if whites split their votes among the white candidates, the minority candidate may win a plurality of the votes. Without some white support, however, minority candidates would probably not receive a majority of the votes needed to win a runoff. Under a majority vote rule, a runoff with a white candidate in these circumstances would generally result in defeat.

Other voting rules, often found in conjunction with the majority vote rule, also can limit minority opportunities for elected office. When more than one member of a governmental body is elected at large, several voting rules can make it difficult for a minority community to target its votes in order to gain elected representation. For example, in a hypothetical town of 6,000 whites and 4,000 blacks, 4 council members are simultaneously elected at large. Each voter is able to cast 4 votes among a field of 10 white candidates and 1 black candidate. With all black voters targeting their votes for the black candidate and voting for no one else, and if the white voters split their votes among the 10 white candidates, the black candidate would probably be among the 4 winners. However, a number of rules, in effect, prevent this targeting or "single-shot" voting.

First, single-shot voting may be prohibited, by requiring voters to cast ballots for a full slate of candidates to make their ballots count. Under this prohibition, each black voter would have to vote for three white candidates in addition to the black candidate. In this situation, these black ballots probably would ensure the success of four white candidates.

Second, the four at-large positions could be distinguished from each other. Although candidates are all vying for the same at-large positions, there would now be four races for four distinct positions. Under this voting rule, particular at-large positions would be designated on the ballot with a numbered post or place. A candidate would declare for the particular post or place and run only against other candidates declared for that position. Black voters in

this hypothetical election would have no opportunity for single-shot voting. The one black candidate would face white opposition for a single position. With a black electorate of 40 percent or a white electorate that rarely votes for blacks, the black candidate's prospects for success would be severely limited. If there is also a majority runoff rule, his or her chances for election would be even further reduced.

Third, each of the four positions might have a residency requirement, but voting is done under an at-large system. In other words, candidates for at-large positions must reside in a specific district or section of the jurisdiction. This voting rule would make single-shot voting impossible by separating the four at-large positions into four races for four distinct positions. Again, the likelihood is increased that the opportunities for minority elected representation would be limited, especially where racial bloc voting prevails in a majority white jurisdiction.

Fourth, the terms of each of the four positions might expire in different years (that is, they are staggered). If each position has a 4-year term and one position is elected each year, single-shot voting would again be impossible. Each position would have been separated into a distinct race in which the opportunities for minority representation would be limited.

Election Systems, Voting Rules, and Opportunities for Minority Representation

Rarely do any of these election systems and voting rules appear in isolation. For example, at-large elections sometimes occur in conjunction with the majority vote, numbered post, and staggered term rules. Given other voting problems that minorities routinely confront, the combination of these election systems and voting rules often places a significant added burden upon minorities running for office.

Although minority representation at virtually every level in States covered by the Voting Rights Act has increased over the last 5 years, minorities continue to be severely underrepresented in most elective offices.[2] The situation appears to be even more acute in jurisdictions with particular election systems and voting rules. At-large election systems appear to have a severe negative effect, and they are extensively used.[3]

For example, in the Southern States covered by the preclearance provisions of the Voting Rights Act, there were 29 municipalities in 1978 with a black majority and total population of 2,500 or more, but with no black representation. Of these, 22 (76 percent) have at-large elections.[4] In 59 percent of all southern cities with a population of 2,500 or more, in which blacks comprise less than 50 percent of the population, and that employ at-large elections only, no blacks serve on city governing councils.[5] This compares with 36 percent of cities using mixed or single-member district election systems.[6]

Multimember election systems also have been associated with minimal levels of minority representation. Where multimember election systems are employed, efforts of minority candidates to gain election are also made more difficult. For example, in the Southern States covered by the preclearance provisions of the Voting Rights Act, three State upper houses and three State lower houses employ multimember districts.[7] In these legislative chambers, 31 blacks held office in 1980, 5.8 percent of the total number of legislators.[8] The situation is most severe in States that employ multimember districts

[2] See chapter 2.

[3] For example, of the 22 cities in Virginia with a total population of 5,000 or more and a black population of 15 percent or more, 19 (86 percent) employ at-large election systems. However, 41 percent of the black council members from these 22 cities are elected from the 4 cities with mixed or single-member districts. Timothy O'Rourke, "City and County At-large Elections and the Problem of Minority Representation," The University of Virginia *Newsletter*, vol. 55, no. 5 (February 1979), p. 2 (hereafter cited as "City and County At-Large Elections"). In Texas, of the 214 home rule cities, 179 (84 percent) employ at-large election systems and 31 (16 percent) use single-member districts or a mixed system. Of the 179 jurisdictions that use at-large elections, 12 (7 percent) have black representation on their municipal councils and 32 (18 percent) have Mexican American representation. However, of the 31 jurisdictions with mixed or single-member districts, 11 (35 percent) have black representation on their municipal councils and 8 (26 percent) have Mexican American representation. Texas Advisory Committee to the U.S. Commission on Civil Rights, *A Report on the Participation of Mexican Americans, Blacks and Females in the Political Institutions and Processes in Texas, 1968–1978*, prepared by Charles Cotrell (1980), pp. 95–102; Joint Center for Political Studies, *National Roster of Black Elected Officials*, vol. 10 (1981); Southwest Voter Registration Education Project, "Texas Roster of Spanish Surname Elected Officials," July 1980. In Mississippi, there are currently 39 cities with populations over 2,500 with at-large city elections. Of those, 27 have no black representation. Of the 12 at-large cities with black representation, 7 are majority black. Frank Parker, director, voting rights project, Lawyers' Committee for Civil Rights Under Law, telephone interview, Feb. 20, 1981.

[4] Paul Stekler, research associate, Harvard University, letter to Commission staff, Feb. 24, 1981 (hereafter cited as Stekler Letter).

[5] Paul Stekler and Gary Orren, "Determinants of Black Electoral Success in Southern Municipalities: Preliminary Analysis" (paper delivered at the 1979 annual meeting of the Southern Political Science Association, Gatlinburg, Tenn., Nov. 1–3, 1979), p. 7.

[6] Ibid.

[7] Joint Center for Political Studies, *National Roster of Black Elected Officials*, vol. 9 (1980), pp. 1, 56, 94, 128, 169, 201, 217, 226.

[8] Ibid. Joint Center for Political Studies, *National Roster of Black Elected Officials*, vol. 10 (1981), pp. 86, 202, 235, 250, 262.

extensively. In Virginia and North Carolina, where 82 of 162 legislative districts are multimember, blacks hold 10 seats, 3.2 percent of all legislative seats.[9]

Where certain election systems and voting rules have been abolished, minority representation has increased significantly. For example, in Texas during the period 1970 to 1978, 29 at-large or multimember systems were changed voluntarily or through litigation to single-member districts or mixed plans.[10] Immediately prior to these changes, the 29 systems elected 9 blacks and 8 Hispanics to office.[11] Immediately after the respective changes, 26 blacks and 24 Hispanics were elected.[12]

In Louisiana, during the same period, 12 at-large or multimember systems were changed voluntarily or through litigation to single-member districts or mixed plans.[13] Before these changes, there were three black elected officials in these jurisdictions.[14] After these changes, there were 24.[15]

In Mississippi, as a result of an injunction preventing implementation of a 1972 State statute requiring at-large elections, 29 cities and towns returned to district systems for their 1977 municipal elections.[16] In that year black city council members in Mississippi increased from 58 to 104.[17]

Election Systems, Voting Rules, and Minority Political Participation

The potential consequences of these election systems and voting rules for minority political participation are numerous. As discussed above, particular election systems and voting rules are associated with significant underrepresentation of minorities in elected office. There are, however, several additional consequences. For example, the opportunities for elected office influence the interest of minorities in becoming candidates. With few opportunities to be elected, the motivation to run is similarly restricted. When the opportunities for elected office have increased, so has the number of minority candidates. For example, in San Antonio, Texas, the change from at-large districts to single-member districts in 1977, resulting from a Department of Justice objection to annexations to the city during the period 1972–74, increased the percentage of Mexican American candidates. In the 1973 and 1975 elections for city council 26.5 percent of all candidates were Mexican American, while in the 1977 and 1979 elections 40.6 percent were Mexican American.[18]

An increase in the number of black candidates has also occurred when a change from at-large to single-member districts bolstered black opportunities for elected office. For example, the redrawing of district lines in Hinds County, Mississippi, in 1979 and the creation of single-member districts in Montgomery County, Alabama, in 1980 increased significantly the number of black candidates who were then willing to run for offices that since the end of Reconstruction had been held exclusively by whites. In Hinds County, the number of black candidates for county supervisor increased from two to four,[19] and in Montgomery County the number of black candidates for county commission increased from zero to seven.[20] Throughout many other areas covered by the preclearance provisions of the Voting Rights Act, there is evidence to suggest that increased opportunities for elected office brought about by changes in election systems and voting rules have produced an increase of minority candidates. As one black candidate in Hale County, Alabama, said, "To tell you the truth, what made me run was when they made the districts."[21]

In the following pages, case studies are presented that document the negative effect of particular election systems, boundary changes, and voting rules upon minority participation in the political process. Those election systems, boundary changes and voting rules that were established subsequent to the effective date jurisdictions were subject to the

[9] Ibid., pp. 202, 262.
[10] U.S., Commission on Civil Rights, Southwest Regional Office, "Notes on Changes From At-Large Systems" (unpublished paper, 1979), p. 1. Of the 29 changes, 18 occurred in conjunction with litigation and 4 in conjunction with objections issued under section 5 of the Voting Rights Act.
[11] Ibid.
[12] Ibid.
[13] U.S., Commission on Civil Rights, "Notes on Changes From At-large Systems," exhibit A.
[14] Ibid.
[15] Ibid.
[16] Lawyers' Committee for Civil Rights Under Law, Mississippi Office, "Mississippi Office: 1978 Report—1979 Litigation Program, 1978 Docket, and 1978 Scorecard," October 1978, pp. 2–3.
[17] Ibid., p. 3.
[18] Charles Cotrell and Arnold Fleischmann, "The Change From At-large to District Representation and Political Participation of Minority Groups in Fort Worth and San Antonio, Texas" (paper delivered at Annual Meeting of the American Political Science Association, Washington, D.C., Aug. 30–Sep. 3, 1979), p. 22.
[19] Ally Mack, professor of political science, Jackson State University, telephone interview, Feb. 26, 1981.
[20] Frank Bray, Montgomery County commissioner, telephone interview, Feb. 20, 1981.
[21] Bob Blalock, "Election Reflects Change," *Tuscaloosa News*, Nov. 9, 1980, p. 4–A.

special provisions are subject to review under section 5 of the Voting Rights Act. In those situations, the preclearance process under section 5 has been effective in preventing the implementation of election systems, boundary changes, and voting rules that have an adverse effect on minority political participation. In some situations where these changes were established prior to the effective date of coverage, suits have been brought under section 2 of the Voting Rights Act or the 14th or 15th amendment alleging discrimination in voting. As the case studies reveal, abolishing already existing election systems, boundary changes, and voting rules that adversely affect minority political participation under section 2 or the 14th or 15th amendment is not only more time-consuming, but it is also more difficult. In some cases these election systems, boundary changes, and voting rules which may violate section 2 or the 14th or 15th amendment have continued unchallenged since minorities either lack the resources or the expertise to initiate such efforts.

Local Election Systems and Voting Rules

Alabama

Opelika, Alabama—At-Large Elections

The Opelika City Commission is composed of three members who are elected at large. One of the commissioners also serves as mayor. The electoral system includes a majority vote rule and staggered terms for the commissioners.[22]

Despite the fact that Opelika at one time had a near majority black population and in 1980 was 33 percent black, no black has ever been elected to the city commission. Between 1969 and 1978, four black candidates ran for places on the commission. All were defeated. Currently, all three members of the Opelika City Commission live in the predominantly white north side of the city.[23]

The lack of opportunities for black candidates to gain election to the Opelika City Commission is related to the interaction of the city's election system with the high degree of racial bloc voting. At-large elections, the majority vote rule, and staggered terms make it impossible for black candidates to be elected without white votes. No black candidate has ever won a single voting box (precinct) in the white community. The one black candidate who reached a runoff failed to attract the votes that had gone to white candidates defeated in the primary election.[24]

The informal practice of filling commission vacancies arising from resignation or death through appointments by the remaining commissioners also has prevented black candidates from ever running in an election in which there was no incumbent. Although black individuals and organizations have attempted to influence the filling of these vacancies, their suggestions have been consistently ignored.[25] According to Rev. A.L. Wilson, pastor of the Thompson Chapel A.M.E. Church in Opelika, blacks are never asked to recommend candidates for these vacancies.[26]

Blacks complain that the all-white city commission has not been responsive to their needs. They cite problems in employment as well as problems related to access to services. For example, they allege that in 1980, 4 of 31 employees at city hall were black. All four of these were in the two lowest paying classifications. In virtually all city departments, blacks were underrepresented or concentrated in the lowest paying jobs.[27] Blacks also claim that in 1978 twice as many black households were located on dirt streets than were white households.[28]

Limited black opportunities in Opelika electoral politics have had severe consequences upon the level of minority political participation. In the last two municipal elections, held in 1979 and 1980, no blacks ran for city commission.[29] This undoubtedly has led to a further negative impact on the black community since, in the past, black candidacies almost always have generated a higher level of black participation.[30] Blacks in Opelika have been frustrated in all of their attempts to gain white support for black representation in elected office, and an increasing number of blacks may be convinced, as one

[22] A.L. Wilson, pastor, Thompson Chapel A.M.E. Church, interview in Opelika, Ala., Sept. 12, 1980 (hereafter cited as A.L. Wilson Interview).
[23] Ibid. Population figures for jurisdictions discussed in this chapter are from the 1980 census. *See* U.S., Department of Commerce, Bureau of the Census, *1980 Census of Population and Housing*, series PHC80-V (1981).
[24] Post-trial Brief for Plaintiffs at 17-20, Lee County Branch of the NAACP v. City of Opelika, No. 78-13-E (M.D. Ala., filed Jan. 25, 1978) (hereafter cited as Post-trial Brief for Plaintiffs).
[25] *Id.* at 6-8; A.L. Wilson Interview.
[26] A.L. Wilson Interview.
[27] Plaintiffs' Supplemental Proffer of Evidence, Lee County Branch of the NAACP v. City of Opelika, at 4-5.
[28] Post-trial Brief for Plaintiffs at 48.
[29] A.L. Wilson Interview.
[30] Post-trial Brief for Plaintiffs at 4-5; Stephen J. Ellmann, attorney for plaintiffs, telephone interview, June 18, 1981.

black observer put it, that "the white attitude here is that black folks are not ready for leadership."[31]

In January 1978 black plaintiffs sued the city of Opelika under the 14th and 15th amendments and section 2 of the Voting Rights Act.[32] The plaintiffs alleged "because of past and present discrimination, black residents and voters of the city of Opelika have had less opportunities than whites to participate in the political process and to elect representatives of their choice."[33] The case is currently pending in the district court.[34]

Hurtsboro, Alabama—Annexation

In Hurtsboro, a five-member city council has consistently refused to annex an adjacent black community, Twin Gates.[35] Most recently, Mary Kate Stovall, the first and only black council member in the 56 percent black town, introduced a motion to annex the area.[36] Ms. Stovall argued that the annexation would increase the city's tax base and bring in more Federal funds.[37] Despite the fact that services to the Twin Gates area already come from Hurtsboro and that the city has lost over 30 percent of its population since 1970, the majority argued that it would be too costly to provide services. The motion died for lack of a second.[38]

Many in the black community are convinced that affordable housing for blacks is constructed only outside the city limits and that the city refuses to annex adjacent black areas because the city council wants to limit black access to city government.[39] In an article on Hurtsboro, the *Wall Street Journal* reported that "whites control the town politically because more of them vote than blacks and because the city government has refused to annex a nearby black section that would tip the racial balance."[40]

Respondents additionally claimed that black residents within Hurtsboro have been discriminated against in terms of city services. People Concerned For Hurtsboro, a black citizens' group, charged in its July 1980 complaint to the Office of Revenue Sharing of the U.S. Department of the Treasury that black citizens in Hurtsboro have received unequal provision of public services.[41] Examples given included: Only 1 household in the white community but 126 households in the black community reside on unpaved roads; there are 19 storm sewers in the white community but only 1 in the black community; there are about 1,584 feet of sidewalks in the white community, none in the black community.[42]

As a result of a previous complaint, the Office of Revenue Sharing found that the city of Hurtsboro had used revenue sharing funds to perpetuate discrimination in city employment and in the provision of sewer services and fire protection.[43]

Georgia

Johnson County, Georgia—At-Large Elections

Since Reconstruction, Johnson County has never elected a black to its three-member county commission or to the offices of sheriff, clerk of court, probate judge, or tax commissioner.[44] All of these offices are elected at large or countywide. Currently, a black serves as one of the four county justices of the peace, who are elected by districts.[45] Commission staff could not find documentation of any other black elected county official from the 32 percent black county in this century.

Black candidates are equally scarce. With the exception of the successful black candidate for justice of the peace, there is no record of any other black candidate for county office in at least the last decade.[46] Although many in the black community have considered running for office, the at-large election system has discouraged them. As one

[31] A.L. Wilson Interview.
[32] Complaint at 1, Lee County Branch of the NAACP v. City of Opelika, No. 78-13-E (M.D. Ala., filed Jan. 25, 1978).
[33] *Id.* at 3.
[34] Stephen J. Ellmann, attorney for plaintiffs, telephone interview, May 19, 1981. For the response of the city of Opelika to these statements, see appendix G of this report.
[35] Peter Martin, staff attorney, Legal Services Corporation of Alabama, interview in Opelika, Ala., Sept. 9, 1980 (hereafter cited as Peter Martin Interview); Fred Bankston, "Hurtsboro Council Rejects Twin Gates Annexation," Columbus *Ledger-Enquirer*, Mar. 20, 1980, p. B-1 (hereafter cited as "Council Rejects Annexation").
[36] Mary K. Stovall, city council member, Hurtsboro, interview in Hurtsboro, Ala., Sept. 8, 1980 (hereafter cited as Stovall Interview).
[37] Ibid.; Peter Martin Interview.
[38] Stovall Interview; "Council Rejects Annexation."
[39] Peter Martin Interview.
[40] Neil Maxwell, "Minority Report," *Wall Street Journal*, Nov. 17, 1980, p. 22.
[41] People Concerned for Hurtsboro v. Town of Hurtsboro, Alabama, complaint mailed to U.S. Department of Treasury, Office of Revenue Sharing, July 22, 1980, p. 1.
[42] Ibid., p. 4.
[43] U.S., Department of Treasury, Office of Revenue Sharing, Hurtsboro, Ala., No. 012057001-001, filed Sept. 17, 1975. Subsequent to these findings, the city changed its recruitment procedures, built a sewer extension in the black community, and purchased an auxiliary fire truck. Ibid. For the response of the city of Hurtsboro to these statements, see appendix G of this report.
[44] John Martin, chairman, Johnson County Justice League, interview in Wrightsville, Ga., Nov. 18, 1980 (hereafter cited as John Martin Interview); Rev. E.J. Wilson, community and religious leader, and advisor, Johnson County Justice League, interview in Wrightsville, Ga., Nov. 17, 1980 (hereafter cited as E.J. Wilson Interview).
[45] John Martin Interview; E.J. Wilson Interview.
[46] John Martin Interview; E.J. Wilson Interview.

individual who briefly considered running for sheriff stated, "Black candidates are just wasting their money."[47]

Blacks feel that the county has been unresponsive to their needs in terms of employment and services.[48] For example, a recent Office of Revenue Sharing investigation found that 3 of 28 full-time county employees in 1980 were black.[49] In 1979 Johnson County hired nine employees, all white.[50] In 1980 Johnson County hired six employees, two of whom were black (a male was hired as a laborer; a female was hired as a janitor).[51] The only other black employee of the county is a "pipe drain supervisor," but he does not supervise anyone; and although he has been on the job for 7 years, he makes only a nominal amount more than the newly hired laborers.[52] In terms of county services, the Office of Revenue Sharing also found starkly differential treatment for whites and blacks.[53] With few opportunities for participation in a county government that is perceived to be unresponsive to the needs of the black community, black apathy in Johnson County remains the norm.[54]

Burke County, Georgia—At-Large Elections

Despite the fact that Burke County has a 54 percent black population, no black has ever been elected to the 5-member county commission.[55] Although two black candidates have run for the commission, they fared miserably in the countywide elections. Neither candidate received a majority of votes in any of the predominantly white precincts.[56]

Black residents of the county filed a suit in district court in 1976, alleging that the at-large method of electing county commissioners unconstitutionally diluted their voting strength under the 14th and 15th amendments, and section 2 of the Voting Rights Act. The district court held in favor of the black plaintiffs and the Court of Appeals for the Fifth Circuit affirmed.[57]

The district court found numerous instances of county unresponsiveness to the needs of the minority community. Examples included:

> allowing some blacks to be educated in largely segregated and clearly inferior schools, failing to hire more than a token number of blacks for county jobs, and paying those blacks hired lower salaries than their white counterparts; forcing black residents to take legal action to protect their rights to integrated schools and grand juries and to register and vote without interference; and participating. . .and contributing public funds to the operation of a private school established to circumvent the requirements of integration.[58]

Burke County has been ordered to establish a single-member district election system.[59]

College Park, Georgia—Annexation, Redistricting

In 1977 College Park attempted to annex 32 areas adjacent to the city and to redistrict its 6-member council. The Attorney General objected to these changes under section 5 of the Voting Rights Act,[60] finding that the black proportion of the city would have been reduced from 43 to 30 percent and concentrated into one council district.[61] Under the proposed redistricting plan, Ward 2 would have had a 77 percent black population.[62] Additionally, the total population of the proposed council districts would vary as much as 16 percent.[63] In terms of opportunities for black representation, the Attorney General concluded that "the annexations significantly dilute the city's black population and that College Park's electoral system does not minimize the dilutive effect of these annexations."[64] The Attorney General also objected to the city's proposed redistricting plan, since there was not sufficient evidence to show "that the redistricting will not have the effect of abridging the right to vote on account of race or color."[65]

[47] John Martin Interview.
[48] Ibid.; E.J. Wilson Interview.
[49] U.S., Department of Treasury, Office of Revenue Sharing, Johnson County, Ga., No. 111083083-002, filed Oct. 31, 1979.
[50] Ibid.
[51] Ibid.
[52] Ibid.
[53] Ibid.; subsequent to these findings, the county initiated an affirmative action program with the goal of hiring 11 blacks by 1985. Ibid.
[54] John Martin Interview.
[55] Plaintiffs' Proposed Findings of Fact and Conclusions of Law, Lodge v. Buxton, No. 176-55 (S.D. Ga., Oct. 26, 1978), at 2, 3, *aff'd*, 639 F.2d 1376 (5th Cir. 1981).
[56] *Id.*
[57] Lodge v. Buxton, 639 F.2d 1376 (5th Cir. 1981).
[58] *Id.* at 1376–77.
[59] *Id.* at 1380–81.
[60] Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to George H. Glaze, city attorney, College Park, Miss., Dec. 9, 1977 (hereafter cited as College Park Objection Letter).
[61] Ibid.
[62] Ibid.
[63] Ibid.
[64] Ibid. In City of Richmond v. U.S., the Supreme Court of the United States held that an "annexation reducing the relative political strength of the minority race in the enlarged city as compared with what it was before the annexation is not a statutory violation [of section 5] as long as the post-annexation electoral system fairly recognizes the minority's political potential." 422 U.S. 358, 378 (1975).
[65] College Park Objection Letter.

Louisiana

Ouachita Parish, Louisiana—Boundary Change

In 1977 the Ouachita Parish School District proposed that the residents of Monroe no longer be permitted to vote in elections for the parish (county) school board. Prior to this, residents of the city could vote for both the parish and city school boards. The Attorney General objected to this change under section 5 of the Voting Rights Act.[66] Under this proposed change, the Attorney General found, the black proportion of the electorate in the Ouachita Parish School District not only would have declined from 28 to 17 percent, but also the only black serving on the parish school board would have been removed.[67]

The Attorney General also determined that "the residents of the city of Monroe have a substantial interest in the parish school system that would justify their being permitted to vote in the parish school elections."[68] Over 3,000 students residing in the city attend these schools, many of the facilities of the parish school system are located in Monroe, and residents of the city of Monroe pay taxes to support the parish school system.[69] Given these facts, the Attorney General concluded that there was not sufficient evidence to show that the proposed boundary change "does not have the purpose and will not have the effect of discriminating on the basis of race or color."[70]

East Baton Rouge Parish, Louisiana—Multimember Election Districts

In 1971 the East Baton Rouge Parish School Board established a multimember election system in which 12 school board members were elected from 3 wards.[71] Under this system and a prior multimember election system, no black had ever been elected to the school board in the 31 percent black parish (county).[72]

In 1974 three black plaintiffs filed suit against the East Baton Rouge Parish School Board under the 14th and 15th amendments, and in 1976 the Department of Justice filed suit against the board under the 14th and 15th amendments, and section 2 of the Voting Rights Act. Both suits alleged that the multimember election system unconstitutionally diluted the black vote.[73] Each suit was dismissed by the district court, but the United States Court of Appeals for the Fifth Circuit revived the cases, sending them back to the district court for further proceedings.[74]

A consent decree was issued on June 6, 1980, establishing a single-member election system.[75] In September and November 1980, the first school board elections using single-member districts were held. In the three predominantly black districts, black school board members were elected. Press Robinson, who had run unsuccessfully for the board in both 1972 and 1976 under the old multimember election system, was one of the successful black candidates.[76]

Mississippi

Port Gibson, Mississippi—At-Large Elections

Port Gibson is governed by a mayor and a six-member council. Members of the city council are elected at large with staggered terms. Additionally, the city employs majority vote and anti-single-shot rules.[77] No black has ever served in elective office in the 63 percent black city.[78] During the period 1970 to 1976, black candidates ran for positions on both the city council and the office of mayor. All lost.[79] It is impossible to calculate precisely the degree of

[66] Drew S. Days III, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Kenneth C. DeJean, assistant attorney general, State of Louisiana, Mar. 7, 1977.
[67] Ibid.
[68] Ibid.
[69] Ibid.
[70] Ibid.
[71] "3 Blacks May Be Elected Under Compromise Plan," *Baton Rouge* (La.) *State-Times*, May 28, 1980, p. 1-A.
[72] Ibid.
[73] Moch v. East Baton Rouge Parish School Board, No. 74-280 (M.D. La., Oct. 10, 1974); U.S. v. East Baton Rouge Parish School Board, No. 76-252 (M.D. La., Aug. 17, 1976).
[74] Moch v. East Baton Rouge Parish School Board, 548 F.2d 594 (5th Cir., 1977); United States v. East Baton Rouge Parish School Board, 594 F.2d 56 (5th Cir., 1979).
[75] U.S. v. East Baton Rouge Parish School Board, No. 76-252 (M.D. La., Aug. 17, 1976); Moch v. East Baton Rouge Parish School Board, No. 74-280 (M.D. La., Oct. 10, 1974) (consent decree entered on June 6, 1980).
[76] Sonny Albarado, "Black School Boardmen May Be Crucial Swing Vote," *Baton Rouge* (La.) *Advocate*, Sept. 15, 1980, p. 12-A.
[77] Carole Brezeale, city clerk, Port Gibson, Miss., telephone interview, May 15, 1981 (hereafter cited as Brezeale Interview).
[78] Evan Doss, Claiborne County tax assessor, and Rev. Eddie Walls, president, Port Gibson NAACP, interview in Port Gibson, Miss., Dec. 2, 1980 (hereafter cited as Doss and Walls Interview); given that the median age of the black population is lower than that of whites, a black majority of 65 percent is generally considered necessary for there to be an equal number of blacks and whites of voting age.
[79] Ibid. James Miller, former candidate for mayor, interview in Port Gibson, Miss., Dec. 2, 1980 (hereafter cited as Miller Interview).

racial bloc voting that occurs, since all residents of the city vote at the same location,[80] but virtually all respondents stressed that considerable racial bloc voting occurs in Port Gibson.[81] For example, Evan Doss, Claiborne County tax assessor, stated that when blacks run for office in Port Gibson, "There is only one issue—that's race."[82]

The lack of opportunities for black candidates to be elected in Port Gibson has dampened the desire of local blacks to run for office. No black has run for office in Port Gibson since 1976.[83] In fact, the 1980 elections in Port Gibson were uncontested.[84] A former candidate for city council said, "Blacks won't run because they have no chance,"[85] while an unsuccessful black candidate for mayor concluded, "You just can't win."[86]

The election system and voting rules in Port Gibson are widely viewed in the black community as crucial mechanisms in limiting black access to city government. According to one respondent, blacks could only overcome the barriers presented by the election system and voting rules with a greatly increased proportion of the population.[87] Under the present system, he stressed, there would never be black representation in government.[88]

Jackson, Mississippi—At-Large Elections

In Jackson, despite a 47 percent black population, no black has ever been elected to the city's 3-member commission.[89] Each commissioner is elected at large with majority vote and anti-single-shot requirements.[90] Although black candidates have run for the commission, all have been defeated.[91] Attempts of black candidates to secure votes from the white majority have consistently failed. For example, in the 1973 municipal election, winning white candidates carried every one of the predominantly white precincts in Jackson.[92] In 1977 the defeat of a referendum to change the at-large election system to one with more opportunities for black candidates again reflected strong racial bloc voting. Seventy-two percent of all white voters supported the retention of the at-large system while 98 percent of all black voters were opposed.[93] This strong white opposition to black candidates and to change in the Jackson election system has been a contributing factor, according to one respondent, to "the prevailing opinion in the black community. . .that it [political participation] doesn't matter."[94]

In March 1977 black plaintiffs sued the city of Jackson, alleging that "at-large voting for members of the Jackson City Council unconstitutionally and unlawfully dilutes, minimizes and cancels out black voting strength" in violation of the 13th, 14th, and 15th amendments, and section 2 of the Voting Rights Act.[95] The district court ruled against the plaintiffs in 1978,[96] but the U.S. Court of Appeals for the Fifth Circuit remanded the case to the district court to be considered in light of a recent Supreme Court decision.[97] In January 1981 the district court again ruled against the plaintiffs, who have subsequently appealed the decision.[98]

Greenwood, Mississippi—At-Large Elections

Greenwood also is governed by a three-member commission.[99] The city also uses majority vote and anti-single-shot rules.[100] Although Greenwood has a majority black population, no black has ever served as commissioner during the history of commission government in the city.[101] Black candidates have run for office in Greenwood, but racial bloc voting has severely limited their opportunities for election.[102] All black candidates for elected office in Greenwood have been eliminated either in the party

[80] The city of Port Gibson does not tabulate votes on the basis of precincts or boxes that are located in particular portions of the city. Rather, all residents vote in the same location and vote in particular boxes according to the first letter of their last name.
[81] Doss and Walls Interview; Miller Interview.
[82] Doss and Walls Interview.
[83] Ibid.
[84] Carole Brezeale, city clerk, Port Gibson, Miss., Evelyn Segrest, former city clerk, Port Gibson, Miss., and Catherine Cade, former city clerk, Port Gibson, Miss., interview in Port Gibson, Miss., Dec. 5, 1980 (hereafter cited Brezeale et al. Interview).
[85] Doss and Walls Interview.
[86] Miller Interview.
[87] Ibid.
[88] Ibid.
[89] Kirksey v. City of Jackson, 461 F. Supp. 1282, 1286 (S.D. Miss. 1978).
[90] *Id.* at 1286–88.
[91] *Id.* at 1286–90.
[92] *Id.* at 1290.
[93] Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 12, Kirksey v. City of Jackson, No. J77-0075(N) (S.D. Miss., Aug. 28, 1978) (hereafter cited as Plaintiffs' Proposed Findings).
[94] Henry Kirksey, Mississippi State senator, interview in Jackson, Miss., Dec. 3, 1980 (hereafter cited as Kirksey Interview).
[95] Plaintiffs' Proposed Findings at 1.
[96] Kirksey v. City of Jackson, 461 F. Supp. 1282, (S.D. Miss. 1978).
[97] 625 F.2d 21 (5th Cir. 1980).
[98] Kirksey v. City of Jackson, 506 F. Supp. 491 (S.D. Miss. 1981); Frank Parker, director, Voting Rights Project, Lawyers' Committee for Civil Rights Under Law, and Barbara Phillips, attorney, Lawyers' Committee, interview in Washington, D.C., May 20, 1981 (hereafter cited as Parker and Phillips Interview).
[99] Jordan v. City of Greenwood, No. GC-77-52-K-P, at 4 (N.D. Miss., filed May 6, 1977).
[100] *Id.* at 4–5.
[101] *Id.* at 4.

primaries or defeated as independents in the general election.[103]

Blacks have sued the city under the 13th, 14th, and 15th amendments, and section 2 of the Voting Rights Act, alleging that the election system and voting rules result in the election of a city commission that is "unresponsive to the particular needs and interests of the black community."[104] For example, black membership on appointed city boards has been limited. In the 52 percent black town, as of October 1980, there were 7 boards or commissions with no black members and 7 with only 1 black member.[105] According to the plaintiffs, a seven-member city council elected from single-member districts would resolve many of these problems. The case has been tried, but no decision has been rendered.[106]

Warren County, Mississippi—Redistricting

In Warren County the 1971 county elections were held under a redistricting plan objected to by the Attorney General under section 5 of the Voting Rights Act.[107] After the 1975 county elections were stayed by the district court pending development of a nondiscriminatory plan by the county, the all-white board of supervisors in the 37 percent black county filed suit in the District Court for the District of Columbia seeking approval under the Voting Rights Act of its proposed redistricting plan.[108]

The 1929 redistricting plan, the last plan effective prior to the Voting Rights Act, contained three districts within the near majority black city of Vicksburg and two in rural Warren County, but the new redistricting plan proposed to eliminate the Vicksburg districts and in each new district combine portions of the city with rural areas.[109] One area in the city with a high concentration of blacks would be divided among three districts.[110] The proposed plan also contained districts that were neither compact nor contiguous. Finally, the redistricting plan contained no district with more than a 61 percent black population.[111] A 65 percent black population is generally considered the minimum necessary to give blacks an opportunity to be elected to office.[112]

The U.S. District Court for the District of Columbia denied preclearance of the proposed redistricting plan for Warren County. The court stated that the county had "failed to demonstrate that the proposed plan would not lead to a retrogression in the position of racial minorities. . ." and that the county had "offered no valid nonracial justification for the district lines within the city of Vicksburg which result in irregular shaped districts, fragment the black community and cause a diminution of black voting strength."[113]

Subsequent to this decision, the all-white county board of supervisors refused to conduct elections under the 1929 redistricting plan.[114] However, in September 1979 the district court put into effect an interim, court-ordered, county redistricting plan and set elections for November 27, 1979.[115] The interim plan included districts that were 67 percent and 65 percent black.[116] The first black county supervisor in this century was elected in Warren County in that election.[117]

North Carolina

Wilson, North Carolina—At-Large Elections

In 1953, under a single-member district election system, G.K. Butterfield, Sr., became the first black in this century elected to the Wilson City Council.[118] Mr. Butterfield served two terms and was defeated in his bid for a third term in 1957 after a single-

[103] *Id.* at 5.

[104] *Id.* at 4–5; Willie Perkins, attorney for plaintiffs, telephone interview, June 18, 1981; Democratic Municipal Executive Committee, "Votes Cast in Primary Election held in the City of Greenwood, Leflore County, Mississippi on the 11th day of May, 1965"; Election Commissioners, the City of Greenwood, "Votes Cast in the city of Greenwood, General Election held in the City of Greenwood, LeFlore County, Mississippi on Tuesday, June 3, 1969"; Election Commissioners, the city of Greenwood, "Votes Cast in the General Election held in the city of Greenwood, LeFlore County, Mississippi, on the 5th day of June, 1973"; City of Greenwood, "1st Democratic Primary, May 12, 1981."

[105] *Id.* at 5–6.

[106] Final Pretrial Order, Jordon v. City of Greenwood, Oct. 27, 1980.

[107] Perkins Interview. For the response of the city of Greenwood to these statements, see appendix G of this report.

[108] Lawyers' Committee for Civil Rights Under Law, Mississippi Office, "Mississippi Office: 1978 Report–1979 Litigation Program, 1978 Docket, and 1978 Scorecard," p. 2.

[109] Donnell v. United States No. 78-0392 (D.D.C. July 31, 1979), *aff'd*, 100 S. Ct. 1000 (Feb. 19, 1980).

[110] *Id.*

[111] *Id.*

[112] *Id.*

[113] Donnell v. United States No. 78-0392 (D.D.C. July 31, 1979), *aff'd*, 100 S. Ct. 1000 (Feb. 19, 1980); Under section 5 of the Voting Rights Act, objections to redistricting or reapportionment plans that have a discriminatory effect are based on the standards established in Beer v. U.S., 435 U.S. 130 (1976). The Department of Justice can conclude that a redistricting plan has a discriminatory effect when it would lead to a "retrogression in the position of racial minorities with respect to their effective exercise of electorial franchise." (Ibid. at 141.) Of course, the Department can also conclude that district lines were drawn with a discriminatory purpose if evidence leads to that conclusion.

[114] Stokes v. Warren County Election Commission, No. J79-0425(c)(S.D., Miss., Aug. 30, 1979).

[115] *Id.*

[116] *Id.*

[117] Joint Center for Political Studies, *National Roster of Black Elected Officials*, vol. 10 (1981), p. 159.

member district election system was replaced with an at-large election system.[119] From 1957 to 1975, there was no black representation on the Wilson City Council, despite the fact that approximately one-third of the city's residents were black.[120]

A.P. Coleman, Wilson's only minority council member, was first elected as part of a slate sponsored by a predominantly white group of 60 Wilson business, professional, and civic leaders.[121] In the 1975 election, the "Wilson Forward" slate elected all four of its candidates.[122] With the financial and organizational support of "Wilson Forward," Mr. Coleman ran well in both black and white precincts, finishing fourth in the field of 25 candidates and third on the "Wilson Forward" slate.[123] Two other black candidates who ran without "Wilson Forward" backing trailed far behind, although one of the other black candidates outpolled Mr. Coleman in three of the four majority black precincts.[124]

In 1977 Mr. Coleman did not seek reelection, but another black candidate, G.K. Butterfield, Jr., did seek election. Although Mr. Butterfield ran first in all four black precincts and collected more votes in each of these precincts than Mr. Coleman had in 1975, he lost, because in the six predominantly white precincts, he ran last.[125]

In 1979 Mr. Coleman was one of six candidates running for six council seats.[126] In an uncontested election with low turnout, he finished first.[127] Although the top vote getters in 1975 and 1977 had been made mayor pro tem, Mr. Coleman was not.[128] According to Mr. Coleman, he "was completely taken by surprise" and "felt race was a factor in the change."[129]

The ability of blacks to be elected under the present election system in Wilson is, therefore, dependent upon both white votes and organizational resources. Without this support, the opportunities are few. The perception remains in the Wilson black community that the at-large system was established to remove blacks from office and is retained to deny blacks their full political participation.[130] As one respondent stated, "Every time blacks advance, the city tries to stop it."[131] Despite requests by the black community that a mixed election system be established to ensure greater black participation, there is little support for such a change on the city council.[132] It appears that in the near future the situation will continue by which many blacks in Wilson perceive the city council as closed to their participation. One individual stressed that he did not feel that he has a vote on city council.[133]

Halifax County, North Carolina—At-Large Elections

Halifax County is governed by six county commissioners who serve staggered terms and are elected with majority vote and residency requirements.[134] Halifax County also elects a sheriff, registrar of deeds, and clerk of the court.[135] Despite a 47 percent black population, no black has been elected to any at-large or countywide position.[136]

The 1980 defeat of George T. Young, Sr., for the District 4 seat on the Halifax County Commission reflects the effect of the local electoral system and voting rules on black candidates. Although Mr. Young was required to reside in District 4 to run for the seat, all voters in the county could vote for him in the election. What this means for black candidates from predominantly black and rural districts of Halifax County is that they cannot gain election to the county commission without votes from predominantly white Roanoke Rapids.[137] For example, while candidate Young defeated his white opponent in District 4 (the district he was to represent) by 852 to

[119] George Butterfield, Jr., Rev. Talmadge Watkins, president, Wilson NAACP, J.E. Williams, Milton Fitch, Sr., and Milton Fitch, Jr., interview in Wilson, N.C., Oct. 22, 1980 (hereafter cited as Butterfield et al. Interview).
[120] Ibid.
[121] Ibid.; A.P. Coleman, councilmember, Wilson, N.C., interview in Wilson, Jan. 26, 1981 (hereafter cited as Coleman Interview).
[122] Ibid.
[123] Ibid.
[124] Ibid.; Supervisor of Elections, Wilson County, N.C., "Official Results, City Council Election, Nov. 4, 1975."
[125] Supervisor of Elections, Wilson County, N.C. "Official Results, City Council Election, Nov. 4, 1975."
[126] Butterfield et al. Interview; Coleman Interview; Supervisor of Elections, Wilson County, N. C., "Official Results, City Council Elections, 1975," and "Official Results, City Council Election, Nov. 8, 1977."
[127] Butterfield et al. Interview; Coleman Interview.
[128] Supervisor of Elections, Wilson County, N.C. "Official Results, City Council Election, Nov. 6, 1979."
[129] Butterfield et al. Interview; Coleman Interview.
[130] Coleman Interview.
[131] Butterfield et al. Interview.
[132] Ibid.
[133] Ibid.
[134] Ibid; For the response of the city of Wilson to these statements, see appendix G of this report.
[135] George Young, former candidate for Halifax County Commission, interview in Enfield Township, N.C., Jan. 27, 1980 (hereafter cited as Young Interview); Horace Johnson, Jr., former candidate for Halifax County Commission, telephone Interview, Jan. 5, 1981 (hereafter cited as Johnson Interview).
[136] Young Interview.
[137] Ibid.

713 votes, he lost predominantly white precincts in Roanoke Rapids by more than 1,000 votes.[138] As a result, Mr. Young lost the countywide election by 436 votes.[139] Under the county election system and voting rules, Mr. Young was declared the loser, since he needed to gain more votes countywide than his opponent for the District 4 seat.

Both Mr. Young and the only other black candidate for Halifax County Commission in the last decade, Horace Johnson, Sr., stressed that district elections are the only way to make the county government responsive to the needs of the black community.[140] As Mr. Johnson described it, at-large voting perpetuates a system in which "blacks don't get benefits from their taxes."[141]

South Carolina

Georgetown County, South Carolina—At-Large Elections

In 1966 Georgetown County established an at-large election system for electing five members to its governing body. Since that time, the 45 percent black county has also employed numbered post and majority vote rules.[142] Under this election system, two blacks served on the county council during the period 1966 to 1978. Both were appointed first by the council to vacant seats and subsequently never faced serious opposition in any election.[143] However, no black has ever secured a position on the council by first being elected to a contested seat.[144]

The 1978 campaigns of Hugh Walker and Herbert Knox for the Georgetown County Council reflect the difficulties the present election system poses for minority candidates. Mr. Walker faced 1 opponent in his bid for seat 3 and lost by 228 votes in the primary.[145] Mr. Walker received 83 percent of the vote in predominantly black precincts, while his white opponent received 82 percent of the vote in predominantly white precincts.[146] Mr. Knox finished first among four candidates in his bid for seat 4, but did not receive a majority of votes cast.[147] In the subsequent runoff, he lost by more than 500 votes, with most of the support for the 2 white candidates who had been eliminated in the primary going to his white opponent.[148] In the runoff, Mr. Knox polled 94 percent of the vote in predominantly black precincts, while his white opponent polled 94 percent of the vote in predominantly white precincts.[149]

As of 1980, blacks could not be elected to the Georgetown County Council without first having been appointed by the white members of the council. Very high degrees of racial bloc voting in elections where there are black challengers limit significantly the opportunities of these candidates. As one former black candidate put it, "There is a deeply entrenched machinery in the county. The problem is finding a viable alternative to this machinery."[150]

Currently, black plaintiffs are suing the county under the 14th and 15th amendments and section 2 of the Voting Rights Act.[151] They allege that the present election system and voting rules operate "impermissibly to dilute the voting power of the County's black electors. . . .Black voters as a class are deprived of the opportunity meaningfully to participate in the political processes and to elect legislators of their choice."[152]

Florence County, South Carolina—At-Large Elections

In 1971 Florence County School District No. 1 established the procedure of electing nine school board members at large.[153] The new system also employed numbered post and majority vote rules.[154] Black candidates ran for seats on the school board in 1971, 1973, 1976, and 1977, but only the two

[137] In 1980 Roanoke Rapids was 88.4 percent white. U.S., Department of Commerce, Bureau of the Census, *Census of Population and Housing: 1980*, PHC80-V-35, table 2, p. 28.

[138] Young Interview; Supervisor of Elections, Halifax County, "Abstract of Votes Cast at a Primary Election for County Officers, on Tuesday, May 6, 1980."

[139] Ibid.

[140] Young Interview; Johnson Interview.

[141] Johnson Interview.

[142] Brief for Plaintiffs at 2, People United for Progress v. Georgetown County Council No. 78-1539 (D. S.C., filed Feb. 7, 1980) (hereafter cited as Plaintiffs' Brief); Supplementary Memorandum for Plaintiffs, at 1-2, People United for Progress v. Georgetown County Council (hereafter cited as Supplementary Memorandum for Plaintiffs).

[143] Plaintiffs' Brief at 2; Morris Johnson, member, People United for Progress; Herman Green, candidate for Georgetown County School Board; and Cornelius Young, member, People United for Progress, interview in Georgetown, S.C., Nov. 6, 1980 (hereafter cited as Johnson et al. Interview).

[144] Plaintiffs' Brief at 2; Johnson et al. Interview.

[145] "Georgetown County Local Races," *Georgetown* (S.C.) *Times*, June 15, 1978, p. 14.

[146] Ibid.

[147] Ibid.

[148] "Georgetown County Runoff Voting," *Georgetown* (S.C.) *Times*, June 29, 1978, p. 15.

[149] Ibid.

[150] Johnson et al. Interview.

[151] Plaintiffs' Brief at 8.

[152] *Id.* at 13-14, *citing* White v. Regester, 412 U.S. 755, 766 (1973).

[153] Mordecai Johnson, city councilmember, Florence, S.C., and Frank Gilbert, interview in Florence, S.C., Nov. 5, 1980 (hereafter cited as Johnson and Gilbert Interview).

candidates who had been appointed first to vacancies on the board were elected.[155] Each of these candidates ran unopposed.[156] All other black candidates were defeated.[157]

In virtually all of these elections, a high level of racial bloc voting in the 37 percent black county has prevented black candidates from being elected in the present election system.[158] For example, in 1977 a black candidate, Freddie Jolley, led all other candidates in the primary for seat no. 1.[159] Since Mr. Jolley did not receive a majority of the votes cast, a runoff was necessary.[160] In the runoff, the number of white voters in many precincts almost tripled, producing the largest turnout since the school board had been elected countywide. Mr. Jolley gained only 500 additional votes in the runoff, but his white opponent gained an additional 3,500.[161] Candidate Jolly lost by over 2,500 votes.[162]

This system has two apparent effects on the black community. First, the black community has limited control over which blacks are elected to the board. According to respondents, when blacks have suggested blacks for vacancies on the board, the suggestions have been ignored.[163] As one respondent summed up, "Blacks are not represented by blacks of their choice."[164] Second, grassroots political participation is ultimately dampened. One individual described it as a situation in which "blacks get conditioned under these electoral rules to losing."[165]

In June 1978, black plaintiffs sued the school district under the 1st, 13th, 14th, and 15th amendments, and section 2 of the Voting Rights Act.[166] The plaintiffs alleged that "the adoption and continued use of the at-large, numbered seat and majority run-off system was and is for the purpose and effect of diluting the voting strength of black residents of Florence. . . ."[167] The case was dismissed after the school board agreed to abolish the numbered post and majority vote rules. In the May 5, 1981, school board elections, the first held under the new voting rules (plurality vote and no numbered posts), one black candidate was elected.[168]

South Dakota

Tripp and Fall River Counties, South Dakota—Organization of Government, Redistricting

Under South Dakota law, both Shannon and Todd Counties are unorganized counties attached for governmental purposes to neighboring Fall River and Tripp Counties, respectively. Before 1975, the residents of predominantly Indian Shannon and Todd Counties were not permitted to vote in the elections of predominantly white Fall River and Tripp Counties, which provide them with governmental services.[169]

In *Little Thunder v. State of South Dakota,*[170] plaintiffs, who were residents of these unorganized counties,[171] alleged that South Dakota law prevented them from voting for county officials in violation of the 14th amendment to the U.S. Constitution. Under South Dakota law, unorganized counties such as Shannon and Todd are attached to organized counties for "administration of governmental and fiscal affairs, including all State, county, judicial, taxation, election, recording, canvassing and foreclosure purposes. . . ."[172] County officials who administer these local government functions for the unorganized counties are elected by voters of the organized counties. Residents of the unorganized counties were not allowed to vote for the county officials of the organized county to which they are attached.

The district court dismissed the plaintiffs' complaint.[173] On appeal, the U.S. Court of Appeals for the Eight Circuit reversed the district court's decision and remanded the case to the district court for granting of appropriate equitable relief.[174] The court of appeals found that the South Dakota law denied

[154] Ibid.
[155] Ibid.
[156] Ibid.
[157] Ibid.
[158] Ibid.
[159] Florence County Election Commission, "Tabulation of Returns, Special Election for School District No. 1, Florence County, South Carolina, held May 3, 1977" (hereafter cited as Florence County Tabulation of Returns, May 3, 1977).
[160] Ibid.
[161] Florence County Election Commission, "Tabulation of Returns, Special Election for School District No. 1, Florence County, South Carolina, held May 17, 1977" (hereafter cited as Florence County Tabulation of Returns, May 17, 1977).
[162] Florence County Tabulation of Returns, May 17, 1977.
[163] Johnson and Gilbert Interview.
[164] Ibid.
[165] Ibid.; statement by Frank Gilbert.
[166] Complaint at 1, Freddie Jolley v. School District No. 1 of Florence County, No. 78-880 (D.S.C., Filed June 2, 1978).
[167] *Id.* at 2.
[168] John Gaines, attorney for plaintiffs, telephone interview, May 18, 1981.
[169] Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Mark Meierhenry, attorney general, State of South Dakota, Oct. 22, 1979 (hereafter cited as Meierhenry Objection Letter).
[170] Little Thunder v. State of South Dakota, 518 F.2d (8th Cir. 1975).
[171] Todd, Washabaugh, and Shannon Counties were the only unorganized counties in the State.
[172] S.D. Codified Laws Ann. §7-17-1 (1967).
[173] Little Thunder v. State of South Dakota, 518 F.2d 1253, 1254 (8th Cir. 1975).

the residents of the unorganized counties equal protection under the law. The court of appeals stated that the residents of the unorganized counties had a "substantial interest in the choice of county elected officials since those officials govern their affairs." [175] The court further stated that "such unequal application of fundamental rights we find repugnant to the basic concept of representative government." [176] As a result of this court decision, residents of the predominantly Indian counties of Shannon and Todd can now vote for county government officials in Fall River and Tripp Counties.

Subsequent to the 1975 *Little Thunder* decision, the Tripp County commissioners devised an election system which allowed residents of Todd County to vote for all three Tripp County commissioners, but allowed the residents of Tripp County to vote only for the one commissioner running from their district. [177] After the 1976 elections, however, the Tripp County Commissioners sued the State of South Dakota, alleging that the attachment of the counties was illegal since the residents of the two counties had not approved the change. [178] They also alleged that the election system allowing residents of Todd County to vote for all three commissioners and the residents of Tripp County only to vote for one commissioner was unconstitutional. [179] The South Dakota Supreme Court upheld the attachment but also held that the present election system was unconstitutional. [180] The court barred the successful candidate for commissioner in the 1976 election from taking office until the counties were reapportioned. [181]

Based upon this decision, the Tripp County Board of Commissioners adopted a new redistricting plan to be used for the 1978 elections. [182] Upon submission of the new plan under section 5 of the Voting Rights Act, the Attorney General determined that because the apportionment plan was based on voter registration instead of population statistics, there was "a total deviation in population distribution of approximately 65 percent" among the three proposed districts. [183] The Attorney General further noted that "the one district which is predominantly Indian in population. . .is substantially underrepresented whereas the two predominantly white districts are both significantly overrepresented. . . ." [184] As a result, the Attorney General objected to the plan, since Tripp County had not met the burden of proof "that the plan under submission does not have the purpose or effect of abridging the right to vote on account of race." [185]

The Attorney General later declined to reconsider the objection. [186] After the Department of Justice filed suit, alleging that the county was planning to hold its November 1978 elections in districts pursuant to the redistricting plan that had not been precleared, the county signed a consent decree that allowed the 1978 elections to proceed. [187] The decree, however, barred the results in the commissioners' races from being certified unless either the Attorney General or the U.S. District Court for the District of Columbia found the proposed districts not to be discriminatory in purpose or effect. [188] As of May 1981, the results of the 1978 commissioners' race have not yet been certified. No commissioners have been elected since 1974 and despite the *Little Thunder* decision, the current commissioners were elected solely by the voters of Tripp County. [189]

In *Little Thunder,* the U.S. Court of Appeals for the Eighth Circuit held that residents of predominantly Indian Shannon County had a "sufficient interest in the elections of Fall River county offficials to be entitled to the right to vote for those officials." [190] Full participation for the predominantly Indian residents of Shannon County in Fall River county government, however, has not been realized. In 1976, Frank Rapp, an Indian and resident of Shannon County, attempted to run for county commissioner of Fall River County. [190a] His nominating petition was rejected by the county on the

[174] *Id.* at 1256.
[175] *Id.*
[176] *Id.* at 1258.
[177] County of Tripp v. State of South Dakota, 264 N.W. 213, 219 (Sup. Ct. S.D. 1978).
[178] *Id.*
[179] *Id.*
[180] *Id.* at 219.
[181] *Id.* at 221.
[182] Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Tom Tobin, State attorney's office, State of South Dakota, Oct. 26, 1978.
[183] Ibid.
[184] Ibid.
[185] Ibid.
[186] Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, reconsideration letter to Tom Tobin, State attorney's office, State of South Dakota, Nov. 9, 1978.
[187] United States v. Tripp County, No. 78-3045 (D. S.D. No. 1, 1978).
[188] *Id.*
[189] Mark Posner, attorney, Voting Section, Civil Rights Division, U.S. Department of Justice, telephone interview, May 14, 1981; two of the current commissioners were elected in 1974 by the voters of Tripp County. The third commissioner was not elected but appointed by the other two.
[190] United States v. State of South Dakota, 636 F.2d 241, 244 (8th Cir. 1980).
[190a] *Id.* at 242.

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grounds that only residents of Fall River County could run for county commissioner.[191] The Attorney General filed a complaint against the State of South Dakota, alleging that this prohibition violated the 1st, 14th, and 15th amendments, and section 2 of the Voting Rights Act.[192] The district court dismissed the complaint, but on appeal, the U.S. Court of Appeals for the Eighth Circuit reversed the decision and remanded the case to the district court for granting of appropriate relief.[193] The court held that the "candidacy restriction. . .clearly burdens the right to vote in that it restricts the field of candidates and this limits the voters' freedom of choice."[194] The court further stated that this "right to vote is severely circumscribed by their inability to vote for candidates who live in the same county as they do. . . .The ultimate effect of the candidacy restriction would be the denial of representation to an identifiable class of voters with a common interest."[195]

The political status of residents of Shannon and Todd Counties in neighboring Fall River and Tripp Counties has been further complicated by the passage of South Dakota House Bill 1197, which severs Tripp County from Todd County and Fall River County from Shannon County. The act establishes the two predominantly Indian political units as organized counties.[196] The Attorney General objected to this proposed change, however, finding that "the preponderance of evidence suggests that one of the reasons for the passage of House Bill 1197 is to nullify the effects" of *Little Thunder.*[197] According to the Attorney General, the lack of sufficient revenues in the newly organized counties and the required contracting out of services by the newly organized Shannon and Todd Counties to Fall River and Tripp Counties would return them "to a position of dependence" upon the predominantly white counties "while being without electoral participation of [these] counties with respect to. . .the. . .permanent county governing bodies."[198] The State of South Dakota is currently seeking a declaratory judgment in the U.S. District Court for the District of Columbia that the proposed law is neither discriminatory in purpose or effect.[199]

Texas

Jim Wells County, Texas—Redistricting

Jim Wells County has a 67 percent Mexican American population, but has only one Mexican American commissioner on a four-person county commission. In 1978 the county submitted a 1975 redistricting plan to the Department of Justice for preclearance.[200] The Department objected to the plan.[201]

In 1974 the county also had redistricted.[202] The plan developed at that time included 2 of 4 commissioner precincts with a Mexican American population of 65 percent or more and a third precinct with a Mexican American population of more than 60 percent. The 1975 plan submitted to the Department of Justice had, however, only 1 precinct with a more than 65 percent Mexican American population and 1 with a more than 60 percent Mexican American population.[203]

The objection letter also noted that the 1975 plan had a greater population deviation among districts than the 1974 plan (40.0 percent and 28.4 percent, respectively) and that the existence of racial bloc voting in the county made it unlikely that a Mexican American would be elected from a majority Anglo district.[204]

On February 1, 1980, the Department of Justice objected to another redistricting plan submitted by Jim Wells County.[205] In this objection, the Department noted that the southern portion of Alice (a town in the county) was divided among all four

[191] *Id.*
[192] *Id.* at 242.
[193] *Id.* at 245.
[194] *Id.* at 244.
[195] *Id.* at 244.
[196] Meierhenry Objection Letter.
[197] Ibid.
[198] Ibid.
[199] State of South Dakota v. U.S. (D.D.C., filed Aug. 6, 1980). For additional information on the voting problems of Native Americans in South Dakota, see also South Dakota Advisory Committee to the U.S. Commission on Civil Rights, *Native American Participation in South Dakota's Political System* 1981).
[200] This first redistricting plan for Jim Wells County was not submitted until 1976 when the Mexican American Legal Defense and Education Fund informed the U.S. Department of Justice that the county had redistricted without preclearance. MALDEF subsequently prevailed in a lawsuit against the county alleging that the county had not precleared its redistricting plan. *See* Arriola v. Harville, No. 78-87 (S.D. Tex., Oct. 9, 1979). The county submitted the redistricting plan on Jan. 18, 1977. Delays in issuing the objection were due to the failure of the jurisdiction to respond to Department of Justice requests for additional information. Elda Gordon, equal opportunity specialist, U.S. Department of Justice, telephone interview, Mar. 17, 1981.
[201] Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Romeo Flores, county attorney, Jim Wells County, July, 3, 1978.
[202] Ibid.
[203] Ibid.
[204] Ibid.
[205] Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to T.L. Harville, county judge, Jim Wells County, Feb. 1, 1980.

commissioners' precincts. That section of the county is also heavily Mexican American. The Department of Justice again stated that Mexican Americans would not likely win an election in predominantly Anglo precincts, given the existence of racial bloc voting in the county. The Department of Justice further stated that the one precinct in which Mexican Americans had a realistic chance of electing a Mexican American to office was of least importance "in view of the paucity of road mileage and budget funds allocated to it."[206] Finally, it noted the lack of minority participation in developing the redistricting plan.[207]

On August 12, 1980, the Department of Justice again objected to another redistricting plan submitted by Jim Wells County.[208] The county's new plan still divided the minority concentration in the southern portion of Alice into all four commissioner precincts. The Department noted that other plans were available that would not divide the concentration of minorities in Alice.[209] It further stated, "The adoption of a plan that would maintain Mexican American voting strength at a minimum level, where alternative options would provide a fairer chance for minority representation, is relevant to the question of an impermissible racial purpose in its adoption."[210] Finally, the Department repeated that there was no significant participation by the minority community in the adoption of the redistricting plan.[211]

Crockett County, Texas—Redistricting

In May 1974 a Mexican American candidate, Jesus Castro, won the Democratic nomination for county commissioners' court in Precinct 4 in Crockett County. Although Precinct 4 had long had a majority Mexican American population, Mr. Castro became the first Mexican American ever to receive the Democratic nomination for county commissioners' court in the 45 percent Mexican American county.[212]

In Crockett County a Democratic nomination is tantamount to being elected.[213] Before Mr. Castro could be elected in the November general election, however, the commissioners' court reapportioned the precincts, concentrating Mexican Americans in Precinct 4, to ensure that he would be the only Mexican American elected.[214] Under the redistricting, Precinct 4 would now have an 84 percent Mexican American population.[215] The result was a smaller proportion of Mexican American voters in other precincts in which there had also recently been Mexican American challenges to incumbent Anglo commissioners. In fact, in Precinct 1, which lost a significant number of Mexican Americans under the new redistricting, a Mexican American candidate had previously come within 60 votes of defeating the Anglo incumbent.[216] The new redistricting plan had been introduced by the incumbent Anglo commissioner of Precinct 1.[217]

Without submitting the new districts for preclearance by the Department of Justice under section 5 of the Voting Rights Act, the county held the November 1974 elections. After the Attorney General objected to the plan,[218] the county nevertheless proceeded with the May 1976 Democratic primary and the June 1976 runoff.[219]

After the 1976 primary, Mexican American plaintiffs sued the county, attempting to prevent the 1976 general election or any subsequent elections from taking place in the districts to which the Department of Justice had objected. A final order by the Federal court in September 1977 required that commissioners' court Precincts 1 and 3 be returned to their pre-1974 boundaries and that a special election employing the pre-1974 boundaries in those districts be held on December 10, 1977.[220] Subsequent charges of irregularities in the December 10 election and the January 1978 runoff revealed such a widespread pattern of election law violations that a State district court invalidated this election and ordered a new election for August 1978.[221] In this new election,

[206] Ibid.
[207] Ibid.
[208] James P. Turner, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to T.L. Harville, county judge, Jim Wells County, Aug. 12, 1980.
[209] Ibid.
[210] Ibid.
[211] Ibid.
[212] Texas Advisory Committee to the U.S. Commission on Civil Rights, *Report on the Participation of Mexican Americans, Blacks and Females in the Political Institutions and Processes in Texas, 1968–1978*, prepared by Charles Cotrell (1980), p. 225 (hereafter cited as *Report on Participation*).
[213] Ibid., p. 222.
[214] Ibid., pp. 225–26.
[215] Ibid., p. 226.
[216] Ibid.
[217] Ibid.
[218] J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Lucius D. Burton, attorney-at-law, Odessa, Tex., July 7, 1976.
[219] *Report on Participation*, pp. 227–28.
[220] Ibid., pp. 227–29.
[221] Ibid., pp. 230–32. These irregularities included the color coding of ballots so that the votes of Mexican Americans could be identified and later removed from the absentee ballot boxes.

Sostenes DeHoyos defeated the incumbent Anglo who authored the redistricting plan and became the first Mexican American elected to the position of county commissioner in Precinct 1.[222]

Houston, Texas—Annexation, Redistricting

In 1977 Houston annexed 37 square miles of predominantly white suburban areas, adding almost 140,000 new residents, almost all Anglo. As a result of the annexations, the black population in the enlarged city was reduced from 26.0 to 24.8 percent, and the Mexican American population was reduced from 14.0 to 13.5 percent.[223] When the city attempted to preclear these annexations under section 5 of the Voting Rights Act, the Attorney General objected.[224] The Attorney General stressed that the decrease in the minority population would make it even more difficult than had formerly been the case for minority residents to elect minority candidates under the present at-large system that also included residency districts and numbered posts.[225] At that time, there was one minority member on the eight-member city council. According to the Attorney General, "Although approximately two of every eight residents of the City of Houston are black, and approximately one of every eight residents is a Mexican American, only one black, and no Mexican American, has ever served on the eight member City Council under the present electoral system."[226]

The city was granted approval by the Department of Justice to hold a referendum on August 11, 1979, on expanding the city council from 8 to 14 members. In the proposed election system, nine council members would be elected from single-member districts and five would be elected at large. Although blacks and Mexican Americans opposed the plan for a larger council, the referendum passed.[227] The subsequent drawing of the new district boundaries was cleared by the Attorney General, and three new minority council members were elected on November 6, 1979. As a result there are now four minorities on the Houston City Council.[228] On September 21, 1979, the Attorney General withdrew his objection to Houston's proposed annexations.[229]

Virginia

Hopewell, Virginia—At-Large Elections

Hopewell currently has a seven-member council whose members are elected at large and serve staggered terms.[230] No black has ever served on the Hopewell City Council. In fact, only 1 black has ever run for the council in the 20 percent black city. Although Rev. Curtis Harris has run for the city council 6 times over a 16-year period, none of his candidacies has been successful.[231]

In 1964, 1966, 1968, 1970, 1978, and 1980, the Reverend Mr. Harris was a candidate for city council.[232] In each election, he could not gain enough white support to be elected.[233] For example, in both 1978 and 1980, Mr. Harris polled more total votes in the two precincts with significant black populations than any other candidate on the ballot.[234] However, in predominantly white precincts in both of these elections, he ran last or next to last.[235]

Without white support and, in particular, without support from Precinct No. 4, minority candidates cannot be elected to the Hopewell City Council.[236] Currently, six of the seven members of the council reside in Precinct 4.[237] Under this election system, blacks have been reluctant to run, and Mr. Harris has been the only exception.[238]

After considerable efforts by the Hopewell Action Council, the Virginia Southern Christian Leadership Conference, and the Virginia American Civil Liberties Union, the city council voted on January 13, 1981, to put the current at-large election system to a citywide referendum to determine if the voters prefer single-member districts.[239] The referendum

[222] Ibid., p. 232.
[223] Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Robert M. Collie, Jr., city attorney, Houston, June 11, 1979.
[224] Ibid.
[225] Ibid.
[226] Ibid.
[227] U.S., Commission on Civil Rights, *The State of Civil Rights: 1979* (1980), p. 33.
[228] Ibid.
[229] Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, letter withdrawing objection to Robert M. Collie, Jr., city attorney, Houston, Sept. 21, 1979.
[230] "City and County At-Large Elections," p. 2; Curtis Harris, president, Virginia Southern Christian Leadership Conference, and Elizabeth Jackson, president, Hopewell Action Council, interview in Hopewell, Va., Jan. 12, 1981 (hereafter cited as Harris and Jackson Interview).
[231] Ibid.
[232] Ibid.
[233] Ibid.
[234] City of Hopewell: "City Council Election, May 2, 1978 Election Results"; and "May 6, 1980 City Council Election."
[235] Ibid.
[236] Harris and Jackson Interview.
[237] Ibid.
[238] Ibid.
[239] Ibid.

will be held as part of the general election on November 3, 1981.[240]

State and Federal Elections Systems and Voting Rules

South Carolina

State Senate—Multimember Districts

The South Carolina Senate elects its 46 members in 13 multimember districts and 3 single-member districts. The senate also uses numbered post and majority vote rules.[241] No black has served in the South Carolina Senate in this century.[242] The South Carolina House elects its 124 members in single-member districts only, using a majority vote rule.[243] Of the 124 members of the house, there were 14 black members in 1980.[244]

Although black representation in the South Carolina Legislature has increased in the last decade, the election systems and voting rules used in both chambers of the legislature limit the opportunities for black representation. In the senate, majority white, multimember districts composed of several counties in which candidates must run for a particular seat have made black representation impossible.[245] For example, in 1980 William Saunders, a Charleston radio station owner, was considered a strong contender to be the first black since 1895 to be elected to the senate.[246] However, he was defeated in his bid for the vacant seat no. 1 in senate District 16, which is composed of Georgetown and Charleston Counties. In traditionally Democratic Georgetown County, which is 45 percent black, Mr. Saunders received 58 percent of the vote, polling 98 percent of the vote in predominantly black precincts.[247] In more populous Charleston County, which is 34 percent black, his support fell to 43 percent of the total vote.[248] Given the present boundaries of this multimember district, blacks cannot be elected. Senate seat no. 1 in District 16 is now occupied for the first time by a Republican.[249]

In March 1980 black plaintiffs sued the State of South Carolina under the 1st, 13th, 14th, and 15th amendments, and section 2 of the Voting Rights Act. The plaintiffs alleged that "the present method of electing the senate of South Carolina, including the use of large majority-white multimember districts, numbered seats and the majority runoff requirement has the effect and is for the purpose of diluting the relative strength of the class of black voters in South Carolina. . . ."[250] The case was dismissed by the district court and, according to one of the attorneys for the plaintiffs, the suit is not being pursued due to lack of financial resources necessary to support such an effort.[251]

State House—Redistricting

The South Carolina House has single-member districts, but black opportunities for election to that body continue to be limited to those few districts whose boundaries include majority black voting populations. High levels of racial bloc voting in conjunction with the majority runoff rule severely limit black opportunities for election in virtually all other single-member districts. For example, in house District No. 61, which includes portions of Florence, Dillon, and Marion Counties, Frank Gilbert, a black candidate, led four white candidates in the August 23, 1977, Democratic primary. He polled 1,141 votes or 46 percent of the votes cast.[252] Mr. Gilbert's total was almost double that of his nearest challenger.[253] He had not received a majority of the votes, however, and was forced into a runoff, which he lost to his white opponent.[254]

In house District No. 107, which includes a portion of Georgetown County, Morris Johnson, a black candidate, won the Democratic nomination

[240] Curtis Harris, president, Virginia Southern Christian Leadership Conference, telephone interview, June 18, 1981. For the response of the city of Hopewell to these statements, see appendix G of this report.
[241] *Registration and Election Laws of South Carolina*, §2-1-60 (1980), §7-17-600 (1980).
[242] Johnson and Gilbert Interview.
[243] *Registration and Election Laws of South Carolina*, §2-1-10 (1980), §7-17-600 (1980).
[244] Joint Center for Political Studies, *The National Roster of Black Elected Officials*, vol. 10 (1981), p. 235.
[245] Johnson and Gilbert Interview.
[246] "A Black Man Runs for the S.C. State Senate," *Focus*, 1980, no. 8, p. 7.
[247] Dillard Field, "Margin Elects Cantrell; GOP Captures 2 seats," *Georgetown* (S.C.) *Times*, Nov. 6, 1980, p. 2.
[248] Ibid.
[249] Ibid.
[250] Complaint at 6, Simkins v. Gressette, No. 80-0500-8 (D.S.C., filed Mar. 14, 1980).
[251] Mordecai Johnson, former city council member, Florence, S.C., and attorney for plaintiffs, telephone interview, May 20, 1981. The Department of Justice also filed a lawsuit against the State of South Carolina, alleging that the 3 single and 13 multimember districts and the use of numbered posts and majority runoff requirements diluted minority voting strength, in violation of section 2 of the Voting Rights Act and the 15th amendment. (U.S. v. State of South Carolina, No. 80-730-8 (D.S.C. filed Apr. 18, 1980)). The complaint was later withdrawn in light of the Bolden decision, which makes intent to discriminate difficult to prove; Paul Hancock, Assistant for Litigation, U.S. Department of Justice, Civil Rights Division, Voting Section, interview in Washington, D.C., May 27, 1981.
[252] Johnson and Gilbert Interview; statement by Frank Gilbert.
[253] Ibid.
[254] Ibid.

for the seat vacated by the death of the incumbent. In the February 15, 1977, Democratic runoff, Mr. Johnson defeated his white opponent by 2,193 votes to 2,061.[255] However, in the April 5, 1977, final election, Mr. Johnson failed to attract any additional white support, which was needed to ensure his election over his Republican opponent. In 4 predominantly white precincts, he polled 25 votes in the February runoff compared to 502 votes for his Democratic opponent.[256] In the final election Mr. Johnson could increase his support in these precincts to only 48 votes, while his Republican opponent polled 802 votes.[257] Mr. Johnson lost the election by over 700 votes.[258] In that election Georgetown County elected its first Republican to the statehouse in this century.[259]

Virginia

State House—Multimember Districts

The Virginia House of Delegates elects its 100 members from 20 single-member districts, 28 multimember districts, and 4 floterial districts.[260] (Floterial districts are single-member districts whose boundaries encompass other districts. Electors in these districts, therefore, vote for candidates who will represent the floterial district, as well as for those who will represent the other districts.) Of the 100 members in the house of delegates, 4 are black.[261] This level of black representation is related in part to the fact that only one district in the entire house of delegates has a potential black voting-age majority.[262] Although blacks constitute 19 percent of the State population, and are concentrated in the southern and southeastern portions of the State, the drawing of legislative boundaries and the extensive use of multimember districts has limited black opportunities for elected office.[263]

Currently, all four blacks in the Virginia House of Delegates are elected from multimember districts. In these particular districts, candidates must run districtwide for three to seven seats in the house of delegates. Since none of these districts has a black majority, there is a tenuous electoral base for black candidates.[264] As a result of the refusal of many whites to support black candidates, only single-shot voting in the black community has in some instances assured black representation. In 1979, of the four black delegates elected, three ran far behind white delegates elected in the same multimember districts. In Newport News, Delegate Robert C. Scott ran at least 2,500 votes behind the successful white candidates.[265] In Richmond, Delegates Benjamin Lambert and James Christian, Jr., ran at least 3,000 votes behind the successful white candidates.[266] In fact, Mr. Christian avoided defeat by only 442 votes.[267] Only the late William F. Robinson, former delegate from Norfolk, avoided this situation in the last house of delegates election.[268] According to Norfolk community leader Evelyn Butts, however, Mr. Robinson finished first in the seven-member Norfolk district because a certain number of blacks voted for him only.[269] In past elections, Mr. Robinson had finished seventh in the seven-member district despite the fact he had been endorsed by the local Democratic party.[270] Efforts were made in 1979 to avoid this through single-shot voting.[271]

The problem for black candidates in multimember legislative districts in Virginia is that they must gain white support or organize extensive single-shot voting campaigns in the black community. Even when blacks are part of a slate, securing white support is problematic. For example, Delegates Lambert and Christian ran in the Richmond multimember district in 1979 as part of a Democratic slate. Although this gained them some white support, it also gave the whites on the slate more black support.[272] According to a study by Michael Brown of the Virginia State Conference of Branches,

[255] Claire Conners, "Johnson Wins Primary Runoff," *Georgetown* (S.C.) *Times*, Feb. 17, 1977, p. 1.
[256] Claire Connors, "Young Wins Vacant Seat in House," *Georgetown* (S.C.) *Times*, Apr. 17, 1977, p. 1; Board of Canvassers for the County of Georgetown, "The Whole Number of Votes Cast for District 107 House of Representatives."
[257] Ibid.
[258] Ibid.
[259] Ibid.
[260] Code of Virginia, Title 24.1, §12.1 (1980); Chan Kendrick, director, Virginia American Civil Liberties Union, and Judy Goldberg, staff attorney, Virginia American Civil Liberties Union, interview in Richmond, Va., Jan. 13, 1980 (hereafter cited as Kendrick and Goldberg Interview).
[261] Joint Center for Political Studies, *The National Roster of Black Elected Officials*, vol. 10 (1981), p. 262.
[262] Flora Crater, Elizabeth Vantrease, and Meg Williams, *The Almanac of Virginia Politics* (Falls Church, Va.: The Woman Activist Fund, 1981) (hereafter cited as *The Almanac*).
[263] Kendrick and Goldberg Interview.
[264] Michael Brown, coordinator, field branch activities, Virginia NAACP, interview in Richmond, Va., Jan. 13, 1980 (hereafter cited as Brown Interview).
[265] *The Almanac*, p. 16.
[266] Ibid., p. 48.
[267] Ibid.
[268] Ibid., p. 34.
[269] Evelyn Butts, cochair, Concerned Citizens for Political Education, interview in Norfolk, Va., Jan 15, 1981.
[270] Ibid.
[271] Ibid.
[272] Michael Brown, "An Analysis of the 1979 Richmond House of Delegates' Race" (unpublished paper, 1980), p. 8.

NAACP, one out of two black voters supported white candidates, but only one of three white voters supported a black candidate in the 1979 house of delegates race in Richmond.[273]

Mississippi

State Senate and House—Redistricting (Multimember Districts)

The Mississippi Senate and House currently elect all 174 members from single-member districts.[274] In the 1979 elections, the first to be held with single-member districts only, two blacks were elected to the senate and 15 to the house. [275] Prior to this election, the extensive use of multimember districts limited to 4 the number of blacks in the Mississippi legislature,[276] although blacks then constituted 38 percent of the State's residents.

The current apportionment plan is the culmination of 14 years of litigation in which blacks attempted to achieve fair representation in the Mississippi legislature. In 1965 black plaintiffs filed suit against the State of Mississippi alleging that the existing legislative apportionment did not comply with the one-person, one-vote principle, in violation of the equal protection clause of the 14th amendment.[277] The district court found for the plaintiffs and ordered the Mississippi legislature to reapportion on the basis of one person, one vote.[278]

Subsequent to the 1966 court decision, two plans developed by the State and one developed by the U.S. District Court for the Southern District of Mississippi were held unconstitutional due to malapportionment.[279] In addition, the Department of Justice objected to two plans developed by the legislature, one in 1975 and one in 1978.[280] The latter plan objected to by the Department of Justice was subsequently determined not to be discriminatory in purpose or effect by the U.S. Disctrict Court for the District of Columbia and is the one currently in effect.[281]

There was strong opposition by black residents of the State to the prior plans because they maintained the multimember district election system.[282] These districts diluted black voting strength, since many of them were created by combining majority black counties with majority white counties, with the majority white counties having the larger population.[283]

In 1978 the Mississippi legislature adopted a plan that required members of the legislature to be elected from single-member districts. That plan, which is the current one, has resulted in increased representation by blacks in the Mississippi legislature, from 4 in 1978 to 17 in 1979.[284]

Congress—Redistricting

Under the 1962 drawing of congressional district lines by the Mississippi Legislature, the Second and Third Congressional Districts encompassed Mississippi's delta region and contained 24 of the State's 29 majority black counties.[285] The Second Congressional District was 59 percent black and the Third was 46 percent black.[286]

In 1966 the Mississippi Legislature redistricted, drawing congressional district boundaries horizontally across the State. As a result, the Mississippi delta region, which is predominantly black, was divided among four of the State's five congressional districts.[287] The 1972 congressional redistricting plan made only minor changes in the 1966 plans.[288]

The 1972 plan, which is currently in effect, contains no congressional district that is more than 46 percent black.[289] A high degree of racial bloc voting and a majority vote rule employed in party primaries, combined with these congressional district boundaries, make it virtually impossible for black congressional candidates to be elected in Mississippi.[290]

Recent elections in the Fourth Congressional District, which is 43 percent black, reflect the limited opportunities for black candidates. In 1980 a

[273] Ibid.
[274] Miss. Code Ann. §§5-1-1, 5-1-3 (1972) (1980 Cumm. Supp).
[275] Joint Center for Political Studies, *The National Roster of Black Elected Officials*, vol. 10 (1980).
[276] Ibid., vol. 8 (1978).
[277] Conner v. Johnson, 256 F. Supp 962 (S.D. Miss. 1966).
[278] *Id.*
[279] *See* Connor v. Johnson, 265 F. Supp 492 (S.D. Miss. 1967) and Connor v. Johnson, 330 F. Supp 506 (S.D. Miss 1971), *supplemented in* 330 F. Supp. 521 (S.D. Miss. 1971).
[280] *See* State of Mississippi v. U.S., No. 78-1425 (D.D.C. June 1, 1979) at 2 and 7, *aff'd* 444 U.S. 1050 (1980).
[281] *Id.*
[282] One plan was a single-member district plan that was held unconstitutional on malapportionment grounds. *Connor v. Finch*, 431 U.S. 407 (1977).
[283] Parker and Phillips Interview.
[284] Joint Center for Political Studies, *The National Roster of Black Elected Officials*, vols. 8 and 10 (1978 and 1980).
[285] Washington Research Project, *The Shameful Blight: The Survival of Racial Discrimination in Voting in the South* (Washington, D.C.: 1972), p. 96 (hereafter cited as *Shameful Blight).*
[286] U.S., Department of Commerce, Bureau of the Census, *Congressional District Data Bank* (1963), p. 254.
[287] *Shameful Blight*, p. 97.
[288] Ibid., p. 98.
[289] Congressional Quarterly, *Congressional Districts in the 1970's* (Washington, D.C.: Congressional Quarterly, 1974), pp. 108-09.
[290] Kirksey Interview.

black candidate, Henry Kirksey, declared for Congress in the Fourth Congressional District. In the June 3 Democratic primary, he outpolled all other candidates, but did not receive a majority of the votes cast.[291] In the subsequent runoff, Mr. Kirksey could not gain enough additional support, especially among white voters, to win the nomination. In the runoff his total vote increased by 9,000, but that of his white opponent increased by over 18,000. He lost by almost 6,000 votes.[292]

In the November 4 final election, another black candidate, Leslie McLemore, ran as an independent for the same congressional seat. Although Mr. McLemore finished second, he, too, was unable to secure significant white support. For example, in Jackson's predominantly white northeast and south sections, candidates Kirksey and McLemore failed to win any of the 39 precincts.[293] In fact, in only 5 of the predominantly white precincts did their vote amount to more than 15 percent of the total votes cast in any of the 3 elections in which they were candidates.[294]

Candidacy

Not only do particular election systems and voting rules and certain methods of drawing boundary lines reduce the opportunities for minority representation, but minority candidates also may confront a variety of other problems that have a similar effect. In some instances, potential minority candidates may never run. In others, minority candidates may face obstacles that contribute to their defeat. Factors that may affect minority candidates in this way include harassment and intimidation of minority candidates or voters and limited access to both white and black voters.

Harassment and Intimidation

In many areas, strong disapproval both of minorities running for office and of members of the minority community supporting these candidates continues. Although the Voting Rights Act prohibits officials and private citizens from interfering with the right of minorities to vote,[295] minority candidates and minority voters still are harassed and intimidated in numerous ways that adversely affect their right to vote.

Harassment or intimidation of minority candidates can begin even prior to a declaration of candidacy. For example, in Johnson County, Georgia, Robert Folsom, a black resident of the county who had been participating in efforts to improve the economic and political status of blacks in the county, had been seriously considering running for sheriff. He had broached the topic both with black friends and white coworkers.[296] On April 19, 1980, shots were fired into Mr. Folsom's house, wounding his daughter.[297] Mr. Folsom chose not to run for sheriff.[298] The incident has had other effects on Robert Folsom. Subsequent to the shooting, he quit his job as a police officer. According to Mr. Folsom, any law enforcement officer must confront racism, but he "cannot be objective now."[299] Folsom stated that "now my daughter is walking around with [shotgun] pellets in her head."[300] Two whites were arrested and charged with the shooting.[301]

After declaring their candidacy, minority candidates continue to be the targets of white disapproval. In Roanoke Rapids, North Carolina, city council candidate Granville Carter stated that he received threatening telephone calls and numerous expressions of disapproval of his campaign. Mr. Carter said that he was told by whites, "You're not supposed to be in politics." Moreover, blacks informed him that his campaign would negatively affect black people in Roanoke Rapids.[302] Mr. Carter believes that white employers had put pressure on black employees to give him that message.[303]

In Jackson, Mississippi, congressional candidate Leslie McLemore stated that he eventually decided to travel accompanied by campaign aides, one who was armed, after receiving threatening telephone

[291] Rhodes Cook, "Black State Senator Leads Field For Rep. Hinson's Seat But Faces June 24 Runoff," Congressional Quarterly *Weekly Report*, June 7, 1980, p. 1556.
[292] "Mississippi 4th Runoff Results," Congressional Quarterly *Weekly Report*, June 28, 1980, p. 1802.
[293] Kirksey Interview.
[294] Ibid.
[295] 42 U.S.C. §1971(b) (1976).
[296] Robert R. Folsom, community activist, interview in Wrightsville, Ga., Nov. 18, 1980 (hereafter cited as Folsom Interview).
[297] Ibid.
[298] Ibid.
[299] Ibid.
[300] Ibid.
[301] In the Superior Court of Johnson County, Ga., Danny Hugh Foskey and Hershel D. Hall were charged with the offense of aggravated assault against Constance Folsom, Bobby Folsom, Carolyn Lucinda Folsom, and Christine Folsom. Special Presentment, Superior Court, Johnson County, Ga., Apr. 19, 1980. According to the assistant district attorney for Johnson County, William McBroom, the trial of the two alleged assailants had been scheduled for June 22, 1981, but due to a change in the attorneys for the plaintiffs, it was postponed. On June 25, 1981, motions from the plaintiffs' new attorneys were heard.
[302] Granville Carter, candidate for city council, Roanoke Rapids, North Carolina, interview in Roanoke Rapids, N.C., Jan. 28, 1981 (hereafter cited as Carter Interview).
[303] Ibid.

calls that warned of dire consequences "if you don't get out of the race."[304] During the campaign, persons working for Mr. McLemore stated that both a McLemore campaign office and a booth were marked with Ku Klux Klan advertisements.[305]

In South Carolina, on October 31, 1980, a cross was burned on the lawn of James W. Fennell, a candidate for South Carolina House District No. 120, which includes Hampton and Colleton Counties.[306] According to Mr. Fennell, the cross burning was one of numerous incidents of intimidation and fraud that led to his defeat.[307] Although the South Carolina Board of State Canvassers refused to overturn the election, it did find "that there were gross improprieties and irregularities in the conduct of this election in both counties."[308]

Minorities may also be subject to strong disapproval if they support minority candidates. As a result, they may be convinced that support for minority candidates could have disastrous consequences. In Plaquemines Parish, Louisiana, the Parish Administration Advisory Council, chaired by the chairman of the Plaquemines Parish Commission, Chalin Perez, sent a letter to parish employees endorsing white school board candidates only. Black community activists in the parish argued that this letter intimidated many of the parish's black employees,[309] and as a result, many did not support black school board candidates in 1980.[310] None of the black school board candidates won, although one ran from a predominantly black district.[311] Additionally, according to the campaign manager of one unsuccessful black candidate, blacks in the parish "still vote for white candidates out of fear."[312]

In Dillon County, South Carolina, some blacks also have been afraid to vote for black candidates. According to a black candidate, word spreads in the community that influential whites "will know" for whom blacks voted.[313]

Minorities who support minority candidates who are running as independents may also be the target of white hostility. When these candidacies challenge both the racial and party status quo, considerable pressure is exerted upon black voters not to support these candidates. According to Herman Green, who ran as an independent candidate for the Georgetown County (S.C.) School Board in November 1980, many individuals were reluctant to be associated with an independent campaign in the staunchly Democratic county. Mr. Green stated that "many potential backers are reluctant to contribute or support independents since they have to do business here."[314] In general, he stressed, "There is widespread fear among black voters that the power structure would find out if they supported black independents."[315] Many black voters told Mr. Green that "he should have played ball with them [the Democrats]."[316]

Access to Voters

Since minority candidates often cannot win without at least some white support, the opportunity to campaign freely in the white community is crucial. Minority candidates often find this impossible, however, and most rely solely upon minority votes and resources. For example, George Young, candidate for the Halifax County (N.C.) Board of Commissioners, was unable to recruit white campaign workers and was reluctant to send black workers into many precincts in predominantly white Roanoke Rapids.[317] According to Mr. Young, "The attitude and reception makes it uncomfortable."[318] Mr. Young won many of the rural areas of the county, which are predominantly black, but he fell far enough behind his opponent in these Roanoke Rapids precincts to lose the countywide election.[319] Mr. Young also stressed that even many of his white friends were reluctant to support him openly: "Most

[304] Leslie McLemore, professor and chairman of the Department of Political Science, Jackson State University, and candidate for Congress, interview in Jackson, Miss., Dec. 5, 1980 (hereafter cited as McLemore Interview).

[305] Ally Mack, professor of political science, Jackson State University, interview in Jackson, Miss., Dec. 2, 1980.

[306] James W. Fennell, candidate for South Carolina House District 120, telephone interview, Mar. 19, 1981 (hereafter cited as Fennell Interview); Paul Lieberman and Chester Goolrick, "South Carolina Blacks Still Lack Political Clout Despite Majorities," *Atlanta Constitution*, Jan. 23, 1981, p. 4-A.

[307] Fennell Interview.

[308] State of South Carolina, Board of State Canvassers, Order in Re: Protest of James W. Fennell, Nov. 4, 1980, General Election for State House of Representatives, District 120, Dec. 1, 1980.

[309] Earlie Mae St. Ann, candidate for Plaquemines Parish School Board, interview in Port Sulpher, La., Dec. 11, 1980 (hereafter cited as St. Ann Interview); Rhonda Encalade, poll watcher for Frederick Encalade, candidate for Plaquemines Parish School Board, telephone interview, Dec. 11, 1980 (hereafter cited as Encalade Interview).

[310] Ibid.

[311] Ibid.

[312] Peggy Rayes, campaign manager for Earlie Mae St. Ann, interview in Port Sulpher, La., Dec. 11, 1980 (hereafter cited as Rayes Interview).

[313] Johnson and Gilbert Interview; statement by Frank Gilbert.

[314] Johnson et al. Interview; statement by Herman Green.

[315] Ibid.

[316] Ibid.

[317] George Young, Sr., candidate for Halifax County Commission, interview in Enfield Township, N.C., Jan. 27, 1981 (hereafter cited as Young Interview).

[318] Ibid.

[319] Supervisor of Elections, Halifax County, "Abstract of Votes Cast at a Primary Election for County Officers, on Tuesday, May 6, 1980."

of my white friends said they can't blow their cover in actively supporting me."[320]

In Port Gibson, Mississippi, unsuccessful mayoral candidate James Miller campaigned only in the town's black community. According to Mr. Miller, "It's suicidal, a fruitless effort" to get exposure in the white community.[321]

In Jackson, Mississippi, congressional candidate Leslie McLemore stated that he was not invited to as many business and civic groups as were his white opponents.[322] According to Mr. McLemore, he was excluded both as a black and as an independent candidate.[323]

In many jurisdictions, minority candidates also have difficulty gaining access to political organizations or groups that endorse and financially support candidates. In effect, this also denies black candidates the opportunity to campaign for white votes. For example, in Aransas County, Texas, a Mexican American candidate filed for the office of justice of the peace for Precinct No. 1 in the May 1978 Democratic primary.[324] Before the primary took place, the Anglo incumbent who was seeking reelection died. The only remaining living candidate on the ballot was the Mexican American.[325] The contest, however, was not over.[326] Subsequently, political advertisements appeared in local newspapers informing voters that they could still vote for the former justice of the peace "even though he is now deceased."[327] Voters also were informed that if the deceased "receives a majority of the votes cast, the Aransas County Democratic Committee will convene and select a nominee whose name will be certified to be placed on the General Election Ballot for November."[328] The Mexican American candidate lost the election and, under article 8.22 of the Texas Election Code, the Aransas County Democratic Committee appointed a candidate to serve as the party's nominee for the general election.[329] Rather than selecting the Mexican American candidate, the party selected an Anglo who had not been on the primary ballot.

In Plaquemines Parish, Louisiana, blacks have only recently begun improving their economic and political status.[330] Local respondents stated that many blacks for years were afraid to register, to vote, or to campaign for other changes to improve the quality of their lives; but that is beginning to change.[331] For example, after several years of appeal to the parish commission, the residents of Ironton, an all-black town in the parish, finally got running water in the city in December 1980.[332] Previously, water had to be collected by individuals and stored in cisterns. Additionally, the creation of the present single-member districts for electing members to the school board only occurred after black plaintiffs sued the parish when it was discovered that the parish had not precleared under section 5 of the Voting Rights Act any previous changes in its election system.[333] In the May 1980 elections, the first since the court decision requiring the parish to return to single-member districts, black candidates ran for five of the nine seats on the parish school board.[334] This was the first time in the history of the parish that blacks had run for that body.[335] According to three respondents, the Plaquemines Parish Administration Advisory Council, an all-white body of elected officials and other prominent citizens that endorses candidates, did not support any of the black school board candidates.[336] The advisory council sent letters to all parish employees, urging a vote for

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[320] Young Interview.
[321] Miller Interview.
[322] McLemore Interview.
[323] Ibid.
[324] Joaquin G. Avila, associate counsel, Mexican American Legal Defense and Educational Fund, letter to Gerald Jones, Chief, Voting Section, Civil Rights Division, U.S. Department of Justice, Apr. 28, 1978.
[325] Ibid.
[326] According to Texas law, "If a candidate in the first primary dies after the deadline for filing, his name shall be printed on the first primary ballot and the votes cast for him. If such a deceased candidate receives a majority of the votes, the proper executive committee shall choose a nominee and certify such name to the proper office. . . ."Tex. Elec. Code, Art. 8.22 (Vernon Supp. 1980).
[327] *Rockport* (Tex.) *Pilot*, Apr. 27, 1978, p. 11.
[328] Ibid.
[329] Jose Garza, staff attorney, Mexican American Legal Defense and Educational Fund, telephone interview, May 1, 1981. For the response of the Aransas County Democratic Executive Committee to these statements, see appendix G.
[330] Wendell Rawls, Jr., "Sons of Perez, Delta's Patriarch, Grapple for Power," *New York Times*, Feb. 25, 1980, p. A14; Ron Pursell, managing attorney, Community Development Unit, New Orleans Legal Assistance Corporation, and Ron Chisom, paralegal, Community Development Unit, New Orleans Legal Assistance Corporation, interview in New Orleans, La., Dec. 10, 1980.
[331] St. Ann Interview; Encalade Interview; Merlis Broussard, former plaintiff against Plaquemines Parish, La; interview in Ironton, La., Dec. 8, 1980 (hereafter cited as Broussard Interview).
[332] Ibid.
[333] Broussard v. Perez, 416 F. Supp. 584 (1976).
[334] St. Ann Interview; Encalade Interview; Broussard Interview.
[335] Rayes Interview.
[336] St. Ann Interview; Encalade Interview; Rayes Interview.

"all of the candidates supported by your Parish Administration."[337] None of the black candidates won.[338]

Black candidates also have confronted problems in gaining access to black voters. Unless black candidates can adequately monitor the process of voting and of counting the votes, they may be unable to mobilize their black support and to make black votes count. For example, in November 1980, blacks alleged that many white election workers throughout Mississippi's Fourth Congressional District prevented voters from using marked sample ballots in voting areas.[339] These ballots were provided by candidates. Neither Mississippi law nor general instructions distributed to election workers by the Hinds County Election Commission prohibit the use of these types of sample ballots.[340] According to Leslie McLemore, a candidate for Congress in that election, it was clear that many of these election workers were "trying to negate the effectiveness of the McLemore campaign as much as possible. Poor people and black people rely upon sample ballots more than anyone else."[341] Where the McLemore campaign had trained personnel or attorneys available, this prohibition was not enforced.[342] In St. Landry Parish, Louisiana, a white member of the parish school board controlled the election machinery to such a degree that he was able to organize a complex vote-buying scheme involving election workers.[343] As a result of the ensuing vote buying, two black candidates lost their bid for the school board.[344] Subsequently, the election was overturned, and Gilbert Austin, one of the black candidates, gained a seat on the board in a court-ordered special election in April 1980.[345]

Conclusion

This chapter has discussed both problems encountered by minority candidates which reduce their opportunities for election and also election systems and voting rules which dilute the vote of the minority population.

The Commission found that in jurisdictions subject to preclearance minority candidates experienced obstacles which severely limited their opportunities for election. In Johnson County, Georgia; Jackson, Mississippi; and Hampton County, South Carolina, minority candidates were harassed and intimidated while they campaigned. In Plaquemines Parish, Louisiana, and Dillon and Georgetown Counties, South Carolina, black voters have been fearful of supporting black candidates. In addition, minority candidates often must rely solely upon minority votes and resources to win election. In Roanoke Rapids, North Carolina, and Port Gibson and Jackson, Mississippi, minority candidates found it difficult to campaign in white neighborhoods and had limited access to political organizations or groups that endorse or financially support candidates.

Since 1975 particular election systems and boundary changes also have continued to limit the opportunities for minorities to be elected to office. As the preceding pages have documented, election systems, voting rules, and boundary changes in Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, South Dakota, Texas, and Virginia frequently have reduced the minority population or diluted minority voting strength in specific districts to the point where minority candidates cannot win. In these situations, the minority community sometimes is faced with an unresponsive elected government that ignores their interests in public services, education, and employment.

Discriminatory boundary changes will be of special concern in the period 1980–82. After the 1980 census population figures are released, States, counties, and municipalities again will be determining whether district lines will have to be redrawn. Of primary importance to minorities will be whether redistricting plans lessen minority voting strength

[337] Chalin O. Perez, chairman, Plaquemines Parish Administration Advisory Council, letter on Plaquemines Parish Administration Advisory Council stationery, Sept. 10, 1980.

[338] St. Ann Interview; Encalade Interview.

[339] McLemore Interview; Mack Interview; Kirksey Interview. The Hinds County, Miss., Election Commission, in instructions to election workers for the November 1980 election, stated that the bailiff "should ensure that no candidate or person representing a candidate distributes any campaign literature within 30 ft. of the building. . . .This means any sample BALLOT with candidate's advertisement." State of Mississippi, County of Hinds, "General Election Instructions," Nov. 4, 1980, p. 2. The instructions, however, did not prohibit voters from carrying these ballots into the voting area for their own personal use.

[340] According to Mississippi election laws, voters are not prohibited from using marked sample ballots at election sites. *See*, Miss. Code Ann. §23-7-11; 23-7-311 (Supp. 1980). These sections of the code discuss the use of sample ballots provided by the State, but do not specify that marked sample ballots are prohibited.

[341] McLemore Interview.

[342] Kirksey Interview.

[343] Gilbert Austin, Jr., member, St. Landry Parish School Board, interview in Opelousas, La., Jan. 30, 1981.

[344] Ibid.; United States v. Saint Landry Parish School Board, 601 F.2d 859 (1979).

[345] United States v. Saint Landry Parish School Board, 601 F.2d 859 (1979).

and whether they discriminate against minorities in purpose or effect.

Many of these election systems, voting rules, and boundary changes that have a discriminatory purpose or effect are subject to preclearance under section 5, since they were established subsequent to the effective date the jurisdictions were covered under the Voting Rights Act. In numerous other situations, however, they were established prior to the effective date of coverage under the act. For example, the at-large election systems in Opelika, Alabama; Port Gibson, Mississippi; Georgetown County, South Carolina; Halifax County, North Carolina; and Hopewell, Virginia, were in existence prior to the effective date these jurisdictions were covered under the Voting Rights Act. In many instances, minorities have either lacked the expertise or resources to challenge these election systems or voting rules. In some instances, minorities have sought to prove through the courts that jurisdictions have diluted their voting strength, in violation of the 14th or 15th amendments or section 2 of the Voting Rights Act. Lawsuits alleging unconstitutional vote dilution, however, have been made more difficult due to a recent Supreme Court decision, *City of Mobile v. Bolden.* [346]

In *City of Mobile v. Bolden,* black plaintiffs alleged that the at-large method of electing Mobile, Alabama's, three-person city commission, which had been used since 1911, diluted black voting strength. They alleged unconstitutional vote dilution under the 14th and 15th amendments and under section 2 of the Voting Rights Act of 1965. The plaintiffs prevailed at the district court and appellate court levels.[347] p1Both lower courts relied on *White v. Regester* [348] and *Zimmer v. McKeithen* [349] in holding for the plaintiffs. In *White v. Regester* the Supreme Court of the United States held unconstitutional the use of multimember district election systems in Dallas and Bexar Counties, Texas. The Court discussed the burden of proof required to prove unconstitutional vote dilution:

> The plaintiffs' burden is to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice.[350]

In *Zimmer v. McKeithen* the Court of Appeals for the Fifth Circuit held unconstitutional the use of an at-large election system in East Carroll Parish, Louisiana. In that case, the fifth circuit further developed the standards established in *White* for proving a vote dilution case. It listed several factors that could sustain a finding of unconstitutional vote dilution if an aggregate of them could be shown to exist:

> Where a minority can demonstrate a lack of access to the process of slating candidates, the unresponsiveness of legislators to their particularized interests, a tenuous state policy underlying the preference for multi-member or at-large districting, or that the existence of past discrimination in general precludes the effective participation in the election system, a strong case is made.[351]

In *City of Mobile v. Bolden,* the city appealed the fifth circuit's decision to the Supreme Court of the United States. A divided Court reversed the fifth circuit[352] and issued six opinions.[353] Four justices, the plurality opinion, asserted that intent must be shown under the 14th amendment if an at-large election system is to be found unconstitutional. To prove intent, a "plaintiff must prove that the disputed plan was "conceived and operated as [a] purposeful device to further racial discrimination'. . . ."[354]

The plurality rejected the *Zimmer* standard for proving intent, stating that it was "most assuredly insufficient to prove an unconstitutionally discriminatory purpose. . ."[355] It distinguished the holding in *White* by arguing that the invidious law in *White* (i.e., use of multimember districts) was traced to a racially discriminatory purpose.

The plurality further asserted that a dilution action cannot be brought under the 15th amendment, only under the 14th amendment. It further asserted that discriminatory purpose also must be shown in suits filed under the 15th amendment. It stated that this amendment "prohibits only purposefully discriminatory denial or abridgment by government of the freedom to vote. . . ."[356] and to register. A majority of the Court, however, believed that

[346] 446 U.S. 55 (1980).
[347] 423 F. Supp. 384 (S.D. Alabama 1976), *aff'd* 571 F.2d 238 (5th Cir. 1978).
[348] 412 U.S. 755 (1973).
[349] 485 F.2d 1297 (5th Cir. 1973) (en banc), *aff'd per curiam* on other grounds *sub. nom* East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976).
[350] 412 U.S. at 766.
[351] 485 F.2d at 1305.
[352] 446 U.S. 55 (1980).
[353] *Id.* Justice Stewart wrote the plurality opinion and was joined by Chief Justice Burger and Justices Powell and Rehnquist. Justice Stevens concurred in the judgment and Justice Blackmun concurred in the result. Justices Brennan, Marshall, and White filed dissenting opinions.
[354] *Id.* at 66, *citing* Whitcomb v. Chavis, 403 U.S. 124, 149 (1971).
[355] *Id.* at 73.
[356] *Id.* at 65.

a dilution action based on discriminatory intent still can be brought under the 15th amendment.[357] Finally, the plurality opinion said that section 2 of the Voting Rights Act has an "effect no different from that of the 15th amendment,"[358] thereby stating that discriminatory intent must be shown in lawsuits filed under this section.

Although the *Bolden* decision has made proving unlawful vote dilution more difficult, the negative effects of many election systems, voting rules, and boundary changes are very real. As the preceding case studies have documented, minorities throughout the areas covered by the act are excluded from the political process and are convinced that their current election systems make responsive government impossible. In many areas, numerous unsuccessful efforts to elect minorities to office or to change the particular election system have produced widespread disillusionment and apathy. As one black leader from a near majority black town, which has not elected a black to municipal office in this century, put it, "Blacks have lost hope for representation. Apathy has set in. The feeling of hopelessness is well ingrained."[359]

[357] *Id.* Justices Stevens, Blackmun, White, Marshall, and Brennan formed the majority on this issue. For a discussion of their opinions see Lodge v. Buxton, 639 F. 2d 1358, 1372 (5th Cir. 1981).
[358] *Id.* at 61.

[359] Ronald Jackson, state representative, District 38, interview in Birmingham, Ala., Jan. 29, 1981. Mr. Jackson was referring to the city of Bessemer, Ala., which elects its city commission under an at-large election system.

Chapter 6

Preclearance and Noncompliance

This chapter discusses the kinds of election changes to which the Department of Justice has objected under section 5 of the Voting Rights Act and the degree of local compliance with that section of the act. Section 5 requires jurisdictions subject to preclearance either to submit for preclearance any proposed change in voting practices or procedures to the Attorney General or to obtain a declaratory judgment in the U.S. District Court for the District of Columbia that the proposed change is not discriminatory in purpose or effect.[1]

Section 5 was designed to provide a speedy mechanism for the review of voting changes that could potentially undercut full minority participation in the political process. Given the efforts of jurisdictions to circumvent court decisions that abolished discriminatory voting practices, section 5 provided an ongoing review of all changes in voting practices or procedures. Howard Glickstein, then director of the Center for Civil Rights at the University of Notre Dame, testified at the 1975 hearings on the extension of the Voting Rights Act regarding the effectiveness of section 5:

> Section 5 has had a far-reaching impact in preventing both blatantly and subtly discriminatory changes. As the suspension of literacy tests and devices and the Federal examiner provisions of the act have helped to raze many of the barriers to black registration and voting in the covered States, whites have resorted to changing the governmental structures to assure that black political power will be kept to a minimum. Gerrymandering district lines to avoid black majorities, switching to at-large elections or multimember districts to prevent localized black majorities from electing any representatives at all, and annexing predominantly white suburban areas to majority black cities to avoid black control are some examples of the types of changes section 5 has been used to invalidate.[2]

Department of Justice Submissions and Objections

Between 1975 and 1980, 30,322 proposed changes in voting practices and procedures were submitted to the Department of Justice under section 5 of the Voting Rights Act (see table 6.1). Over one-half of these changes, about 16,208 or 53.5 percent, were submitted by Texas. The next largest number, over 2,200 (7.5 percent) of proposed changes, was submitted by Georgia. Three States (Connecticut, New Hampshire, and Wyoming) submitted no proposed changes at all, and 6 States submitted fewer than 10 each (Hawaii, 9; Idaho, 1; Maine, 3; Michigan, 3; Oklahoma, 1; and South Dakota, 6). All of the Southern States subject to preclearance under the act (the 40 counties in North Carolina, Alabama, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia) except for the covered counties in Florida submitted over 700 proposed changes each.

These proposed changes resulted in a total of 236 objection letters from the Department of Justice.[3] The largest number of objection letters, 85 (36.0

[1] 42 U.S.C. §1973c (1970).

[2] U.S., Congress, Senate, Subcommittee on Constitutional Rights of the Committee on the Judiciary, *Extension of the Voting Rights Act of 1965:* Hearings on S. 407, S. 903, S. 1297, S. 1409, and S. 1443, 94th Cong., 1st sess., 1975, p. 216.

[3] This report covers only changes that have occurred since the Voting

percent), was sent to Texas. Georgia received 41 objection letters, 17.4 percent of the total. These two States accounted for over one-half of the objection letters. Ten States that submitted proposed changes to the Department of Justice received no objection letters (Alaska, Colorado, Florida, Hawaii, Idaho, Maine, Massachusetts, Michigan, New Mexico, and Oklahoma; see table 6.2).

The number of objections, however, is larger than the number of objection letters, since many of these letters contain objections to more than one type of proposed change. For example, one objection letter may contain objections to an at-large election system and to an annexation.

According to figures supplied by the Department of Justice, the 236 objection letters issued included a total of 538 objections. The largest number of objections was to proposed changes submitted by Georgia, 152 objections, or 28.3 percent of the total. This was followed by 128 objections to proposed changes submitted by Texas, 23.8 percent of the total. These were the only States that received more than 100 objections. The next largest number of objections was to proposed changes in Louisiana, with 69 (12.8 percent) (see table 6.3).

In addition, Commission staff analyzed the Department of Justice objection letters to determine which changes most frequently caused objections. To reflect more accurately the total number of objections, the Commission's analysis counts each element of an objection separately. For example, if the Department of Justice had objected to a proposed change involving six polling places, the Commission counted this as six objections whereas the Department of Justice had counted it as one objection. The resulting total number of objections counted by the Commission is, therefore, larger than the total number of objections originally indicated in Department of Justice data reported in table 6.3. Commission analysis of Department of Justice objections shows that there were a total of 770 specific proposed changes to which objections had been interposed (see table 6.4).

The majority of changes that were the subject of objections related to the dilution of minority voting strength.[4] The changes that resulted in the largest number of objections were annexations. These were the subject of 235 objections, or 30.5 percent of the total. The Department of Justice most often objected to the annexations of predominantly white residential areas or to undeveloped areas zoned for middle-income housing. Many objection letters stated that these annexations would have had the effect of decreasing minority voting strength in the annexing jurisdiction, thereby decreasing the possibility that minorities would be able to elect candidates of their choice.

Five other types of proposed changes were objected to more than 50 times each. The Department of Justice objected 80 times (10.4 percent of the total) to proposed changes to at-large election systems.[5] It objected 66 times (8.6 percent) to proposals to institute majority vote requirements[6] and 60 times (7.8 percent) to election changes that included numbered posts.[7] Finally, it objected 56 times (7.3 percent of all objections) to proposed changes involving redistricting of boundary lines that adversely affected minorities and 55 times to changes that involved polling locations.

With the exception of the changes to polling place locations, all of the most frequently proposed changes were ones that could have resulted in the dilution of minority voting strength. These proposed changes accounted for 64.5 percent of all objections interposed by the Department of Justice, or nearly two-thirds of the total.

Several other types of changes that were objected to less frequently also involved dilution of minority

Rights Act was extended in 1975. Data from the Department of Justice indicate, however, that the number of objection letters has risen sharply since the extension of the Voting Rights Act, from 148 between 1970 and 1974, to 236 between 1975 and 1980. U.S., Department of Justice, Civil Rights Division, Voting Section, "Number of Section 5 Submissions Which Have Been Objected to by State and Year from 1965 to February 28, 1981."

[4] "Dilution" occurs as a result of implementation of voting laws, practices, or procedures that decrease minority voting strength and, thereby, decrease the likelihood of electing minority candidates to political office. Mechanisms related to dilution include annexations, at-large election systems, staggered terms, and numbered place systems.

[5] *See* David H. Hunter, *Federal Review of Voting Changes* (Washington, D.C.: Joint Center for Political Studies, 1975). Under an at-large election system, representatives of city or county governing bodies are elected by the entire political subdivision rather than from districts within it. When the minority population is smaller than the white population and when racial bloc voting exists within the political subdivision, a minority candidate could have very little chance of being elected.

[6] Ibid., p. 39. A jurisdiction with a majority vote requirement requires candidates to receive a majority of the votes to win an election. If no candidate receives a majority, there is a runoff election between the two candidates who received the highest number of votes. If one of the candidates is a minority person and voting is along racial lines, the likelihood of winning in a head-to-head contest with the white candidate is minimal.

[7] Ibid., pp. 39–40. Under a numbered post requirement, candidates seeking the same political office are elected by the entire electorate of the jurisdiction but still have to run for a designated post (e.g., A, B, C). For example, if a minority and a white candidate run for post A and voting is along racial lines, the chances for a minority candidate to win in a majority white jurisdiction are minimal.

TABLE 6.1 Changes Submitted Under Section 5 and Reviewed by Department of Justice, by State and Year, 1975–80

State	1975	1976	1977	1978	1979	1980	Total Number	Total Percent
Alabama	299	349	153	146	142	295	1,384	4.6%
Alaska	0	3	0	25	1	8	37	0.1
Arizona	52	228	180	311	163	655	1,589	5.2
California*	0	382	99	105	8	89	683	2.3
Colorado*	0	12	4	34	147	36	233	0.8
Connecticut**	0	0	0	0	0	0	0	0.0
Florida*	1	57	8	46	28	28	168	0.6
Georgia	284	252	242	444	371	689	2,282	7.5
Hawaii*	0	6	0	0	0	3	9	0.0
Idaho*	0	0	0	0	0	1	1	0.0
Louisiana	255	303	460	254	336	356	1,964	6.5
Maine**	0	3	—	—	—	—	3	0.0
Massachusetts**	0	11	0	6	0	0	17	0.0
Michigan**	0	3	0	0	0	0	3	0.0
Mississippi	107	152	114	123	112	153	761	2.5
New Hampshire**	0	0	0	0	0	0	0	0.0
New Mexico*	0	65	—	—	—	—	65	0.2
New York*	78	106	96	72	27	25	404	1.3
Oklahoma*	0	1	0	0	—	—	1	0.0
North Carolina*	293	125	183	156	89	158	1,004	3.3
South Carolina	201	419	299	212	138	192	1,461	4.8
South Dakota*	0	0	0	2	4	0	6	0.0
Texas	249	4,694	1,735	2,425	2,917	4,188	16,208	53.5
Virginia	259	301	434	314	267	464	2,039	6.7
Wyoming*	0	0	0	0	0	0	0	0.0
Total	2,078	7,472	4,007	4,675	4,750	7,340	30,322	99.9

* Selected county (counties) subject to preclearance rather than entire State.
** Selected town (towns) subject to preclearance rather than entire State.
— Not covered.
Note: Column does not total 100 percent due to rounding.

Source: U.S., Department of Justice, Civil Rights Division, Voting Section, Dec. 31, 1980.

TABLE 6.2 Objection Letters From the Department of Justice, by State and Year, 1975–80

State	1975	1976	1977	1978	1979	1980	Total Number	Total Percent
Alabama	5	10	1	2	1	3	22	9.3%
Alaska							0	0.0
Arizona	2	1				1	4	1.7
California*		1	1				2	0.8
Colorado*							0	0.0
Connecticut**							0	0.0
Florida*							0	0.0
Georgia	13	7	8	5	3	5	41	17.4
Hawaii*							0	0.0
Idaho*							0	0.0
Louisiana	3	2	1	3		2	11	4.7
Maine**							0	0.0
Massachusetts**							0	0.0
Michigan**							0	0.0
Mississippi	9	5	6	2	3	3	28	11.9
New Hampshire**							0	0.0
New Mexico*							0	0.0
New York*	1						1	0.4
Oklahoma*							0	0.0
North Carolina*	3		2	2	1	2	10	4.2
South Carolina	2	8	6	7	4		27	11.4
South Dakota*				1	1		2	0.8
Texas	1	29	12	18	12	13	85	36.0
Virginia	1				1	1	3	1.3
Wyoming*							0	0.0
Total	40	63	37	40	26	30	236	99.9%

* Selected county (counties) covered rather than entire State.
** Selected town (towns) covered rather than entire State.

Note: The above figures do not include objections subsequently withdrawn. Column does not total 100 percent due to rounding.

Source: U.S., Department of Justice, Civil Rights Division, Voting Section, Feb. 28, 1981.

TABLE 6.3 Objections Interposed by the Department of Justice, by State, 1975–80

State	Objections 1975–80	
	Number	Percent
Alabama	42	7.8
Alaska	0	0.0
Arizona	7	1.3
California*	5	0.9
Colorado*	0	0.0
Connecticut**	0	0.0
Florida*	0	0.0
Georgia	152	28.3
Hawaii*	0	0.0
Idaho*	0	0.0
Louisiana	69	12.8
Maine**	0	0.0
Massachusetts**	0	0.0
Michigan**	0	0.0
Mississippi	40	7.4
New Hampshire**	0	0.0
New Mexico*	0	0.0
New York	1	0.2
Oklahoma*	0	0.0
North Carolina*	52	9.7
South Carolina	37	6.9
South Dakota*	2	0.4
Texas	128	23.8
Virginia	3	0.6
Wyoming*	0	0.0
Total	538	100.1

* Selected county (counties) subject to preclearance rather than entire State.
** Selected town (towns) subject to preclearance rather than entire State.

Note: The above figures do not include objections subsequently withdrawn.
Column does not total 100 percent due to rounding.

Source: U.S. Department of Justice, Civil Rights Division, Voting Section, Feb. 28, 1981.

TABLE 6.4 Changes Submitted Under Section 5 to Which Objections by Department of Justice were Interposed, by Type of Change, 1975–80

Type of change	Objections	
	Number	Percent
Annexations	235	30.5
At-large elections	80	10.4
Majority vote	66	8.6
Numbered posts	60	7.8
Redistricting/boundary changes	56	7.3
Polling place changes	55	7.1
Residency requirements	42	5.5
Staggered terms	36	4.7
Single-member districts	26	3.4
Change in number of positions	15	1.9
Multimember districts	13	1.7
Registration and voting procedures	13	1.7
Requirements for candidacy	12	1.6
Election date change	11	1.4
Change in terms of office	8	1.0
Bilingual procedures	8	1.0
New voting precinct	6	0.8
Consolidation and incorporation	6	0.8
Change from appointive to elective/elective to appointive	3	0.4
Miscellaneous	19	2.5
Total	770	100.1

Note: The above figures count each element of an objection separately. For instance, if the Department of Justice objected to a proposed change of six polling places, this was counted as six proposed changes, but the Department of Justice data counted it as one objection. The total number of proposed changes in this table is, therefore, larger than the total number of objections from the Department of Justice data above. The above figures do not include objections subsequently withdrawn. Column does not total 100 percent due to rounding.

Source: Commission analysis of Department of Justice objection letters.

voting strength. These included residency requirements,[8] 42 objections (5.5 percent of the total); staggered terms,[9] 36 (4.7 percent); creation of new single-member districts, including newly reapportioned districts or changes in district lines, 26 (3.4 percent); multimember districts,[10] 13 (1.7 percent); and consolidation or incorporation, 6 (0.8 percent). Together, all the objections to proposed changes that could have diluted minority voting strength constituted 80.5 percent of objections issued by the Department of Justice.

The 770 objections or 236 objection letters issued by the Department of Justice to proposed election changes indicate that voting problems continue to exist in various forms in many covered jurisdictions. The discriminatory purposes or effects of these practices and procedures objected to by the Department of Justice continue to impede full minority political participation.

Noncompliance

Department of Justice data presented in the preceding pages reveal the extent and kinds of proposed changes that have been objected to by the Department of Justice through section 5 preclearance. Not all election changes that have a discriminatory effect on minority voters are submitted to the Department of Justice for preclearance. Under the Voting Rights Act, whenever a covered State or political subdivision "shall enact or seek to administer any voting qualifications or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect" on the date used to determine coverage (that is, November 1, 1964, for jurisdictions covered in 1965; November 1, 1968, for those covered in 1970; and November 1, 1972, for jurisdictions covered in 1975), it must preclear the change with the Attorney General or obtain a declaratory judgment from the U.S. District Court for the District of Columbia.[11]

Information obtained from civil rights organizations revealed that jurisdictions do not always comply with the requirements of section 5. They either fail to submit election law changes for section 5 review or they implement changes despite Department of Justice objections. As a result of these practices, those individuals whom the Voting Rights Act is designed to protect are not receiving the protections which Congress intended them to have. The American Civil Liberties Union's (ACLU) southern office has sued several counties in Georgia that failed to preclear changes from single-member election districts to at-large election systems. They have also challenged the enforceability of other types of election law changes made by Georgia counties, but not precleared under section 5. For example, in *McKenzie v. Giles,* the ACLU challenged the at-large election systems for both the Dooly County Board of Commissioners and the Board of Education on grounds that the at-large systems had not been precleared under section 5.[12] In fact, Dooly County's method of electing county commissioners on an at-large basis was enacted in 1967.[13] After the ACLU filed suit against Dooly County alleging noncompliance with the Voting Rights Act, the county submitted its at-large election system to the Department of Justice, some 13 years after the election system was enacted. On July 31, 1980, the Department of Justice objected to the change in method of election.[14] In a consent decree of July 1980, the court in the *McKenzie* case directed that the board of commissioners be elected from three single-member districts.[15] With regard to the at-large election system for the board of education, the court provided for the election of board members from five single-member districts.[16] In March 1981 the Georgia General Assembly enacted legislation providing for single-member district elections for the Dooly County Board of Education.[17] A county

[8] Ibid., p. 40. Under a system with residency requirements, each representative must live in a separate district, but voting may be at large. As a result, a minority candidate may run against a white candidate from a predominantly minority district, but may not win in the general election.

[9] Ibid. Staggered term elections require candidates to run for the same position at different time intervals. As a result, candidates for a number of otherwise identical positions are separated into individual races, and a minority candidate has to run in a head-to-head contest with a white candidate. In an at-large election system where voting is along racial lines, the minority candidate has only a minimal chance of winning.

[10] Ibid., p. 36. Under a multimember district election system, more than one representative is elected from a single district. If the minority population is smaller than the white population in the district and if racial bloc voting exists, a minority person will have very little chance of being elected to office.

[11] 42 U.S.C. [1973c (1976).

[12] McKenzie v. Giles, No. 79-43-Amer. (M.D. Ga. July 5, 1980) (consent decree), Plaintiff's First Amended Complaint at 6.

[13] 1967 Ga. Laws. 2586.

[14] Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to John C. Pridgen, Vienna, Ga., July 31, 1980.

[15] McKenzie v. Giles, No. 79-43-Amer. (M.D. Ga. July 5, 1980) (consent decree).

[16] *Id.*

[17] John Pridgen, county attorney, Dooly County, Ga., telephone interview, July 20, 1981.

referendum on the single-member district election system was held in May 1981 and passed.[18] An election for the five school board posts was held July 14, 1981, and resulted in the election of the first black to the Dooly County Board of Education.[19]

Other Georgia ACLU cases that involved a failure to preclear election changes include *Davenport v. Isler* [20] and *Jones v. Cowart.* [21] These challenges to at-large elections in Clay and Calhoun Counties, respectively, were on grounds that the at-large election systems used in electing county commissioners had not been precleared under section 5. As a result of the suit in Clay County, the three-judge Federal district court ordered, in June 1980, that the county's at-large election system for board of commissioners was "not legally enforceable until such time as administrative or judicial preclearance is obtained therefore pursuant to [1973c."[22] In Calhoun County a June 1980 consent decree provides for the election of county commissioners from five single-member districts.[23] According to the consent decree, five of the seats on the seven-member board of education will also be from these five voting districts, with two members to be elected at-large.[24]

Another ACLU case, *Berry v. Doles,* was brought principally on grounds that Peach County, Georgia's, at-large voting system unconstitutionally diluted minority voting strength.[25] A second cause of action in that suit, however, was that Peach County failed to submit a voting rule implementing staggered terms of office.[26] On February 28, 1977, a three-judge Federal court enjoined enforcement of the rule providing for staggered terms of office until section 5 compliance was met, but denied plaintiffs retroactive relief.[27] In June 1978 the Supreme Court of the United States entered a *per curiam* order directing that Peach County be given 30 days within which to seek preclearance, and if preclearance were denied, plaintiffs were to be allowed to reapply for retroactive relief (e.g., special elections, to remedy the section 5 violation).[28] *Berry v. Doles* was settled in November 1979 when the district court entered a consent decree providing for the election of four county commissioners from single-member districts and one county commissioner to be elected at large.[29]

The ACLU also learned that the city of Dawson, Georgia, was using a numbered post system in city council elections that had not been submitted for section 5 review. The ACLU filed a complaint seeking to enjoin the use of numbered posts, and on November 29, 1977, the district court found for the plaintiffs and barred the use of numbered posts until the city complied with the Voting Rights Act.[30]

The Mexican American Legal Defense and Educational Fund (MALDEF) has also learned of instances in which local jurisdictions failed to seek preclearance of election changes. In conducting discovery for a challenge to the at-large election system in Lockhart, Texas, MALDEF found that a 1973 city charter had not been submitted for section 5 review.[31] The city charter included provisions for a numbered post system and an increase in the size of the city council. MALDEF filed suit to enjoin future elections until the city charter had been precleared.[32] On March 2, 1979, the district court issued a temporary restraining order enjoining the election process until the city of Lockhart submitted the city charter for preclearance.[33] On September 14, 1979, the Department of Justice objected "to the Home Rule Charter insofar as it incorporates an at-large method of election, with numbered posts and staggered terms."[34] After receiving the Department of Justice's objection to its election method, the city of Lockhart filed a declaratory judgment action in the U.S. District Court for the District of Columbia seeking preclearance of the election change.[35] On

[18] Ibid.
[19] Ibid.
[20] Davenport v. Isler, No. 80-42-COL (M.D. Ga., June 23, 1980).
[21] Jones v. Cowart, No. 79-79-ALB (M.D. Ga., June 11, 1980) (consent decree).
[22] Davenport v. Isler, No. 80-42-COL (M.D. Ga., June 23, 1980).
[23] Jones v. Cowart, No. 79-79-ALB (M.D. Ga., June 11, 1980) (consent decree) at 2.
[24] *Id.*, consent decree at 3.
[25] Christopher Coates, staff attorney, ACLU southern office, telephone interview, July 20, 1981.
[26] Ibid.
[27] Berry v. Doles, 438 U.S. 190, 191 (1978) (per curiam).
[28] *Id.*
[29] Berry v. Doles, No. 76-139-Mac. (M.D. Ga., Nov. 16, 1979) (consent decree) at 2.
[30] Holloway v. Raines, No. 77-27 Amer. (M.D. Ga., Nov. 29, 1977).
[31] Jose Garza, staff attorney, MALDEF, San Antonio, Tex., telephone interview, July 17, 1981 (hereafter cited as Garza Interview).
[32] Cano v. Chesser, No. A-79-CA-0032 (W.D. Tex., filed Feb. 7, 1979).
[33] Cano v. Chesser, No. A-79-CA-0032 (W.D. Tex., Mar. 2, 1979) (temp. restr. order).
[34] Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Walter H. Mizell, city attorney, Lockhart, Tex., Sept. 14, 1979.
[35] City of Lockhart v. United States, No. 80-0364 (D.D.C. July 30, 1981) (memorandum opinion).

July 30, 1981, the district court denied the city of Lockhart's request for a declaratory judgment.[36] In denying Lockhart's request, the district court stated:

> The plaintiff has failed to demonstrate. . .that the "home rule" governance and election plan will not have a discriminatory effect on Mexican-American voters ability to elect candidates of their choice. Although the at-large system, by itself, does not deny Mexican-American voters the opportunity to elect candidates of their choice, the imposition of the numbered-post and staggered-term provisions has clearly had and will continue to have such an effect on Mexican-American voters.[37]

In *Escamilla v. Stavely,* MALDEF represented the plaintiffs who brought suit to require Terrell County, Texas, to submit a 1973 redistricting plan to the Department of Justice that had not been precleared.[38] Despite a 1976 request by the Department of Justice that Terrell County submit the 1973 plan for preclearance,[39] the county did not do so until October 28, 1978.[40] On December 27, 1978, the Department of Justice issued an objection letter to the 1973 reapportionment of commissioner precincts in Terrell County.[41] The Department of Justice found that the 1973 redistricting plan afforded Mexican American voters "less of an opportunity than other residents to participate in the political process and elect candidates of their choice" by concentrating the Mexican American community in one precinct and dispersing the rest of the Mexican Americans into other commissioner precincts.[42] The result of this redistricting plan was that the overall effect of the Mexican American vote was minimized or diluted. The district court, in an order of March 18, 1980, ordered Terrell County to submit a new redistricting plan to the Department of Justice.[43] On April 28, 1980, the new redistricting plan was precleared by the Department of Justice.[44]

Other MALDEF cases include *Arriola v. Harville,* a challenge to the implementation of a 1975 redistricting plan for the county commission in Jim Wells County, Texas, that the U.S. district court found was not in compliance with section 5 preclearance requirements[45] and *Silva v. Fitch,* an action to prevent implementation of a 1973 Frio County, Texas, reapportionment plan that the county was implementing despite a Department of Justice objection.[46]

Department of Justice figures also indicate that many jurisdictions continue to fail to preclear proposed election changes. For example, in 1980 a total of 124 letters of request for submissions were sent to covered jurisdictions where it was believed that changes had been made without preclearance.[47] Of these, 79 jurisdictions responded with 78 changes that had taken place without preclearance.[48] As of January 27, 1981, the Department of Justice had received no response from 45 jurisdictions that may have made election law changes, but did not submit them for preclearance.[49]

Preliminary data collected by the Southern Regional Council in Atlanta, Georgia, on nonsubmissions by covered jurisdictions in South Carolina, Georgia, Alabama, and Louisiana further suggest the extent of noncompliance with section 5 preclearance procedures despite the fact that the Voting Rights Act has been in existence for 16 years. The Southern Regional Council reviewed State session laws enacted since the Voting Rights Act was passed and compared these laws to the Department of Justice's records of submissions. Preliminary estimates of nonsubmissions discovered in this manner indicate that South Carolina had 120 nonsubmissions; Georgia, 330; Alabama, 65; and Louisiana, 37.[50]

Janice Glover, project director of the Fair and Open Government Project of the Southern Regional Council, stated that these are "estimates of the number of nonsubmissions"; nonetheless, they are indicative of the extent of noncompliance.[51] In fact, Ms. Glover said, the figures for South Carolina and Louisiana are "probably low because they are home

[36] *Id.* at 12.
[37] *Id.*
[38] Garza Interview.
[39] J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, letter to Jack Hayre, Terrell County attorney, Sanderson, Tex., Dec. 8, 1976.
[40] Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Lucius D. Bunton, Odessa, Tex., Dec. 27, 1978.
[41] Ibid.
[42] Ibid.
[43] Escamilla v. Stavely, No. DR-78-CA-23 (W.D. Tex., Mar. 18, 1980).
[44] Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, letter to James A. Moseley, Odessa, Tex., Apr. 28, 1980.
[45] Arriola v. Harville, No. C-78-87 (S.D. Tex., Oct. 9, 1979).
[46] Silva v. Fitch, No. SA-76-CA-126 (W.D. Tex., Oct. 5, 1975), *aff'd sub nom.* Fitch v. Silva, 429 U.S. 1081 (1977).
[47] Margay Williams, Associate Director of Section 5 Unit, U.S. Department of Justice, telephone interview, Feb. 9, 1981.
[48] Ibid.
[49] Ibid.
[50] David Bell, program officer, Southern Regional Council, telephone interview, July 20, 1981.
[51] Janice Glover, project director, Southern Regional Council, telephone interview, Mar. 13, 1981.

rule States and do not have to go through the State legislature to change local laws."[52]

In some instances jurisdictions have attempted to implement changes despite the fact that the Department of Justice has objected to the change. For example, in July 1979, the Department of Justice filed a civil suit to prevent county officials in Pike County, Alabama, from ignoring a section 5 objection.[53] The county, in 1974, submitted a proposal to change from a single-member district election system for county commissioners to an at-large election system with a residency requirement. Under the new election system, commissioners were required to reside in the district they represented, but each would be elected on a countywide basis. The Department of Justice objected to the change because it was unable to conclude that the at-large system would not have a discriminatory effect.[54]

Despite the objection, Pike County proceeded with elections for commissioners under the at-large system in 1976 and 1978.[55] In addition, Pike County instituted another change, which required candidates to indicate the specific position they sought (i.e., numbered post). This change had never been submitted to the Department of Justice for approval.[56] The U.S. District Court for the Middle District of Alabama held that Pike County's at-large election system and numbered post requirement were unconstitutional.[57] The court declared that the individuals on the Pike County Commission were holding their positions illegally. The court ordered new elections under the old single-member district system unless the Department of Justice interposed no objection to another type of election system that the county might wish to enact.[58]

Another example of a jurisdiction implementing a law despite having received a Department of Justice objection is Hale County, Alabama. The Department of Justice objected on April 23, 1976, to Hale County's change in the method of electing county commissioners from districts to an at-large election system.[59] In May 1976 Hale County held a primary election on an at-large basis to elect candidates to run for county commissioner, places 2 and 3, despite the Department of Justice's objection.[60]

In *United States v. County Commission, Hale County, Alabama,* the Attorney General brought suit alleging that Hale County had changed its election system for county commisssioners in violation of the preclearance requirements of the Voting Rights Act.[61] The district court held that Hale County's change from district elections to at-large elections was of "no force and effect and any elections conducted pursuant to those enactments were unlawful."[62] The court also held that the county would be required to "[elect] county commissioners by district. . .unless and until such time as the Attorney General or the District Court of the District of Columbia determines otherwise."[63]

The Department of Justice continues to be involved in litigation against jurisdictions that implemented changes over its objection. Information provided by the Department indicates that as of December 1980 it has been involved in 48 cases since 1975 involving noncompliance with an objection interposed by the Attorney General under section 5.[64] The Department of Justice was the plaintiff in 29 of these cases[65] (see table 6.5).

Conclusion

Jurisdictions subject to preclearance have submitted over 30,000 changes in voting practices or procedures between 1975 and 1980 for Federal preclearance under section 5 of the Voting Rights Act. Although most changes are innocuous, the Department of Justice's review of proposed voting changes regularly uncovers proposed voting practices or procedures that would be discriminatory in purpose or effect. Between 1975 and 1980, the Department of Justice issued 236 objection letters to proposed changes, an average of 39 objections per year.

Although 236 objection letters may appear insignificant compared to the total number of submissions made in the same time period, the potential effect on minority political participation of each proposed change to which the Department of Justice has objected is significant. For example, as was dis-

[52] Ibid.
[53] United States v. Pike County Commission, No. 79-245-N (M.D. Ala. Oct. 12, 1979).
[54] *Id.*, slip op. at 2.
[55] *Id.*, Brief for Plaintiff at 5.
[56] *Id.*, slip op. at 3.
[57] *Id.* (declaratory judgment) (Oct. 12, 1979).
[58] *Id.*
[59] United States v. County Commission, Hale County, Ala., 425 F. Supp. 433 (S.D. Ala. 1976) (three-judge court), *aff'd*, 430 U.S. 924 (1977).
[60] 425 F. Supp. 435–436.
[61] *Id.* at 433.
[62] *Id.* at 436.
[63] *Id.*
[64] U.S. Department of Justice, Litigation Unit, Table of Cases (1980).
[65] Ibid.

TABLE 6.5 Cases Involving Noncompliance with an Objection by the Attorney General in Which the Department of Justice was the Plaintiff, Defendant, or Amicus, 1975–80

State of jurisdiction involved	1975	1976	1977	1978	1979	1980
Alabama		3		1	1	2
Alaska						
Arizona						
California						
Colorado						
Connecticut						
Florida						
Georgia		2				2
Hawaii						
Idaho						
Louisiana		2				
Maine						
Massachusetts						
Michigan						
Mississippi	5		1			
New Hampshire						
New Mexico						
New York						
Oklahoma						
North Carolina						
South Carolina		1	1	4	1	
South Dakota				1	1	
Texas		3	7	5	1	4
Virginia						
Wyoming						
Total	5	11	9	11	4	8

Source: U.S., Department of Justice, Civil Rights Division, Voting Section, December 1980.

cussed in chapter 5, the Department of Justice's objection letter[66] to proposed annexations in Houston, Texas, prevented the dilution of the city's minority population which would have made it even more difficult for minorities to elect candidates of their choice under the city's at-large election system. As a result of the objection letter, Houston redrew its districts to provide for the election of nine council members from single-member districts and five on an at-large basis.[67] Previously, only one black and no Mexican American had ever been elected to the Houston City Council.[68] The first election after redistricting saw three new minorities elected (two blacks and one Mexican American), increasing the number of minorities on the city council to four.[69] The effect of this one objection letter, then, was surely significant to the minority population in Houston.

Similarly, South Dakota has only received two Department of Justice objection letters, but each of these has had an important effect on the American Indian population in Shannon and Todd Counties. In its 1979 letter, the Department objected to a South Dakota law that would have nullified the effect of a court of appeals decision giving the residents of the unorganized counties of Shannon and Todd (whose populations are predominantly Indian) the right to vote for county officials in the organized counties to which they are attached.[70] In that decision, the court of appeals found that residents of Shannon and Todd Counties were denied equal protection of the laws in not being able to vote for county officials because they had a "substantial interest in the choice of county elected officials since those officials govern their affairs."[71] Although the population affected by this objection letter is only slightly more than 5,000, the objection had the ultimate effect of helping ensure the right of American Indians to vote for officials who govern their lives.

The Department of Justice's section 5 review, then, is a vital mechanism for uncovering proposed changes in voting practices or procedures that could be discriminatory in purpose or effect. A relatively few objections have the potential for significant impact because of the effect one objection can have on the voting rights of a large segment of the minority population in a given jurisdiction. Also, the failure of jurisdictions to comply with section 5 preclearance procedures has a significant effect on the voting rights of racial and language minorities if the examples of known unsubmitted changes are indicative of general failure to preclear.

[66] Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Robert M. Collie, Jr., city attorney, city of Houston, June 11, 1979.
[67] U.S., Commission on Civil Rights, *The State of Civil Rights: 1979* (1980), p. 33.
[68] Ibid.
[69] Ibid.
[70] Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, objection letter to Mark Meierhenry, attorney general, State of South Dakota, Oct. 22, 1979.
[71] Little Thunder v. State of South Dakota, 518 F.2d 1253, 1256 (8th Cir. 1975).

Chapter 7

The Minority Language Provisions of the Voting Rights Act

Practices having the effect of inhibiting the full political participation of language minorities still occur at the local level, as previous chapters have shown. Chapter 4, particularly, documents the continued use of practices which limit their right to vote. The location of polling places in predominantly white communities or white establishments where language minorities feel unwelcome was found to discourage them from voting. Challenging language minority citizens' eligibility to vote without explaining what they can do to vote creates unnecessary frustration and disillusionment with the electoral process for them. The lack of bilingual election officials and trained bilingual workers to assist language minority voters at the polls was also discussed in chapter 4 as limiting their participation.

This chapter will more closely study the problems language minorities have in achieving full political participation. Specifically, it examines whether the minority language provisions added by Congress in 1975 to the Voting Rights Act have resulted in increased access to the political process by language minority groups. The chapter also discusses those practices that continue to exclude language minorities from the electoral process. Federal enforcement of the minority language provisions is also reviewed.

The Minority Language Provisions

Language minority citizens, including those who were born in the United States and those whose families have resided here for generations, have encountered numerous barriers to achieving full political participation. Such barriers have resulted in low registration and voting by language minority citizens. In Texas, for example, a U.S. district court in 1972 stated:

> There can be no doubt that lack of political participation by Texas Chicanos is affected by a cultural incompatibility which has been fostered by a deficient educational system. . . . This cultural and language impediment, conjoined with the poll tax and the most restrictive voter registration procedures in the Nation have operated to effectively deny Mexican Americans access to the political processes in Texas even longer than the blacks were formally denied access by the white primary.[1]

Testimony presented during the 1975 hearings on extension of the Voting Rights Act documented the lack of access of language minority citizens to the political process. Numerous witnesses testified concerning the roles culture, socioeconomic conditions, unequal educational opportunities, and a language other than English have in preventing language minorities from fully participating in the political process.[2] One witness, Howard A. Glickstein, then director of the Center for Civil Rights at the University of Notre Dame, testified:

[1] Graves v. Barnes, 343 F. Supp. 704, 731 (W.D. Tex., 1972).

[2] U.S., Congress, Senate, Subcommittee on Constitutional Rights of the Committee on the Judiciary, *Extension of the Voting Rights Act of 1965: Hearings on S. 407, S. 903, S. 1297, S. 1409, and S. 1443*, 94th Cong., 1st. sess., 1975, see e.g., testimony and prepared statement of Edward R. Roybal, U.S. Representative, pp. 255–68; testimony and prepared statement of Leonel Castillo, city comptroller, city of Houston, Texas, pp. 738–56; testimony and prepared statement of Vilma S. Martinez, president and general counsel, Mexican American Legal Defense and Educational Fund, pp. 756–89; testimony and prepared statement of Howard A. Glickstein, director, Center for Civil Rights, University of Notre Dame, pp. 214–29.

Overt discrimination is not the only factor which limits the political participation of Spanish-speaking Americans. Since most registration and election materials are printed in English, the language barrier often has prevented Spanish-speaking citizens from registering or, once registered, from voting effectively. This barrier is as significant an impairment of the right to vote as any literacy test that was used to deny the franchise to blacks.[3]

In testimony based on its 1975 report, the U.S. Commission on Civil Rights noted that English-only registration and voting "does impede the political participation of voters whose usual language is not English."[4] The Commission further noted:

The failure of the States to provide adequate bilingual assistance through bilingual registration and election officials, bilingual registration forms, ballots, printed election materials, and publicity undermines the voting rights of non-English-speaking citizens and effectively excludes some otherwise qualified voters from participating in elections.[5]

Based upon information presented during the 1975 hearings, the minority language provisions were added to the Voting Rights Act upon determination by the Congress that "voting discrimination against citizens of language minorities is pervasive and national in scope."[6] Congress found that because of the denial of equal educational opportunities by State and local governments, language minorities experienced severe disabilities and illiteracy in the English language that, together with English-only elections, excluded them from participation in the electoral process.[7] Congress, therefore, determined that to enforce the 14th and 15th amendments to the U.S. Constitution, it was "necessary to eliminate such discrimination by prohibiting English-only elections and by prescribing other remedial devices."[8]

The minority language provisions apply in those jurisdictions that meet either of the following two criteria:

(1) The jurisdiction provided English-only registration and election materials on November 1, 1972 (that is, maintained a test or device,[9] under the 1975 amendments), *and* less than 50 percent of its citizens of voting age were registered on November 1, 1972, or voted in the Presidential election of 1972,[10] *and* more than 5 percent of the citizens of voting age in the jurisdiction were members of a single language minority group.[11]

(2) More than 5 percent of the citizens of voting age in the jurisdiction are members of a single language minority, and, the illiteracy rate of such persons as a group is higher than the national illiteracy rate.[12]

Those jurisdictions falling under the first set of criteria are commonly referred to as "4(f)(4) jurisdictions" because they must meet the requirements of section 4(f)(4) of the act. Jurisdictions covered by the second set of criteria are commonly called "203(c) jurisdictions" because they must comply with the provisions of section 203(c).[13]

Jurisdictions covered under either of the two sets of criteria must comply with the special provisions of the Voting Rights Act requiring assistance to language minority citizens.[14] Specifically, these jurisdictions must provide:

. . .any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots,. . .in the language of the applicable minority group as well as in the English language.[15]

The provisions further state that where the language of the applicable minority group is oral or unwritten or, in the case of Alaskan Natives, if the predominant language is historically unwritten, the jurisdiction is "only required to furnish oral instructions, assistance, or other information relating to registration and voting."[16]

Jurisdictions covered under the first set of criteria described above, also are subject to the special provisions of section 5, requiring preclearance with the Attorney General of changes in voting practices or procedures and may be assigned Federal voting examiners and observers.[17] Jurisdictions covered under the second set of criteria described above, are subject only to the minority language provisions. Political subdivisions in States covered under sec-

[3] *Id.*, at 228.
[4] *Id.*, at 98.
[5] *Id.*
[6] 42 U.S.C. 1973b(f)(1) (1976).
[7] *Id.*
[8] *Id.*
[9] *Id.* §1973b(f)(3). This section was added by the 1975 amendments to the act and states that the term "test or device" shall also mean "any practice or requirement by which [a jurisdiction] provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including, ballots, only in the English language." *Id.*
[10] *Id.* §1973b(b).
[11] *Id.* §1973b(f).
[12] *Id.* §1973aa-1a(b). For purposes of this subsection, illiteracy means the failure to complete the fifth primary grade.
[13] The actual minority language "trigger" provisions are §§4(f)(3) and 203(b), respectively, but nonetheless reference is usually made to §§4(f)(4) and 203(c) as if those were the sections defining coverage under the act.
[14] The language minorities covered under the act are American Indians, Asian Americans, Alaskan Natives, and persons of Spanish heritage. 28 C.F.R. §55.1(c) (1980).
[15] 42 U.S.C. §1973b(f)(4), 1973aa-1a(c) (1976).
[16] *Id.*
[17] *Id.* §1973c-1973f.

tion 203 are exempt from the minority language requirements if less than 5 percent of the citizens of voting age are members of a single language minority group.[18]

Interim guidelines for implementing the minority language provisions of the Voting Rights Act were issued by the Department of Justice on October 3, 1975.[19] Subsequently, proposed interpretive guidelines were published for comment, and the final guidelines were issued.[20] These interpretive guidelines establish the framework by which the Attorney General seeks compliance with the major objective of the minority language provisions, "to enable members of applicable language minority groups to participate effectively in the electoral process."[21]

The guidelines provide two basic standards by which the Attorney General measures compliance with the requirements of the minority language provisions. These are:

(1) That materials and assistance should be provided in a way designed to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities; and

(2) That an affected jurisdiction should take all reasonable steps to achieve that goal.[22]

The guidelines stress the responsibility of covered jurisdictions for all implementation decisions. Specifically, they state that compliance with the minority language provisions is the responsibility "of the affected jurisdiction" and the "guidelines should not be used as a substitute for analysis and decision by the affected jurisdiction."[23]

Minority Language Assistance from the Perspective of Minority Language Groups

This section examines practices and procedures that exclude language minorities from effective participation in the electoral process from the perspective of minority language citizens. Interviews were held in five States with individuals and representatives of eight minority group organizations to determine the types of minority language assistance most needed, factors explaining why these needs were not being met, and the steps they considered necessary to aid language minorities to participate more effectively in the electoral process.

Minority group representatives were in agreement that the minority language provisions of the Voting Rights Act have had only minimal results in their areas. For example, Rolando Rios of the Southwest Voter Registration Education Project stated that the language provisions "must have helped, but the impact has only been minimal compared to what would ha been if the law was enforced."[24] Representatives of the American G.I. Forum of the United States in Denver, Colorado, thought the minority language provisions have the potential of increasing the political participation of Mexican Americans in Denver, but local "efforts are not sufficient to have any impact."[25] American Indian representatives in Tahlequah, Oklahoma, said the language provisions have had no effect in Cherokee County.[26]

The reasons why most representatives of minority language groups believe the language provisions have had limited effect are revealed in their discussions of the unmet needs in their communities—bilingual registration services and oral bilingual assistance at the polls. Minority group representatives were unanimous in their opinion that these were the most important services a jurisdiction could offer to enable language minorities to participate more effectively in the electoral process. Publicity about the availability of bilingual services was also considered important. Some of the interviewees thought written minority language assistance was needed, to a lesser extent.

Bilingual Registration Services

In the view of the community-based organizations, bilingual registration services must include more than printed bilingual registration forms. Voter outreach services and voter education programs for the minority language community, they say, are the first and most important steps in getting minority language citizens registered and involved in the

[18] *Id.* §1973aa-1a(b).
[19] 40 Fed. Reg. 46080 (Oct. 3, 1975).
[20] 28 C.F.R. Part 55 (1980).
[21] *Id.* §55.2(b).
[22] *Id.*
[23] *Id.* §55.2(c).
[24] Rolando Rios, director of litigation, Southwest Voter Registration Education Project, interview in San Antonio, Tex., Dec. 16, 1980 (hereafter cited as Rios Interview).
[25] Roderick Delgado, president, Denver American G.I. Forum of the United States; Manuel Gonzalez, Remigio Pete Reyes, Tony Arguello, Denver residents; State Representatives Laura De Herrera and Richard Castro, interview in Denver, Nov. 20, 1980 (hereafter cited as Delgado et al. Interview).
[26] Waythene Young, North American Indian Women's Association, interview in Tahlequah, Okla., Dec. 3, 1980 (hereafter cited as Young Interview), and Agnes Cowan, Cherokee Bilingual Center, interview in Tahlequah, Okla. (hereafter cited as Cowan Interview).

political process. For example, John Navarrette, president of the Mexican American Political Association (MAPA) in Fresno County, California, stated that bilingual oral assistance on a one-to-one basis at registration was the most important need of the language minority community in Fresno.[27] Mr. Navarrette based his comments on his experience with voter registration drives conducted by his organization in cooperation with the county's Hispanic elected officials and with the Southwest Voter Registration Education Project. During these registration drives, his organization found that members of the language minority community had many questions about an apparently simple registration form despite the fact it was in Spanish.[28] Mr. Navarrette stated that "registration cards can be written in Spanish, but assistance has to go beyond that."[29]

In Tahlequah, Oklahoma, Waythene Young, president of the North American Indian Women's Association, expressed similar needs regarding oral assistance at registration for American Indians in Cherokee County. When her organization registered voters in Cherokee County, Ms. Young learned that registration procedures and registration forms needed to be explained.[30] Her organization found that English-speaking students at the Job Corps center also did not understand some of the questions on the registration form.[31] She remarked that "Cherokee County is very bilingual and people speak English, but don't understand it as well as Cherokee and are more comfortable in Cherokee."[32]

Roderick Delgado of the American G.I. Forum of the United States in Denver, Colorado, said that voter registration in Denver is a major need of the Mexican American community that has been overlooked by local election officials.[33] He stated that registration in the minority community is largely the result of efforts by a bipartisan coalition supported by funds from the Southwest Voter Registration Education Project.[34]

The effect of inadequate provision by jurisdictions for the registration needs of minority language citizens is that they are virtually excluded from participation in the electoral process. Unless a community-based organization or a nonpartisan voter registration effort assumes the responsibility of registering language minorities, potential language minority voters remain alienated from the political system and fearful or intimidated by procedures they do not fully comprehend.

The comments made by the representatives of community-based organizations and individuals in Commission interviews concerning the unmet registration needs of language minorities correspond to findings by an extensive Federal Election Commission (FEC) survey. In its 1979 report on bilingual election services, the FEC found that there were fewer bilingual registration services than bilingual voting services.[35] The FEC determined that this inequity was related to the attitude of election officials that "registration is something that people must do for themselves, to demonstrate their commitment to political participation, and that only after being registered do they really merit aid and attention."[36] The FEC concluded that:

> . . .many election administrators either do not want, or feel that they are unable, to deal directly with the large and growing mass of unregistered but eligible voters. Since language minority citizens are disproportionately found in this. . .mass, the inescapable conclusion is that the goals of the bilingual provisions. . .cannot be met until this inattention to the unregistered is remedied.[37]

Oral Bilingual Assistance at the Polls

In addition to registration services, the interviewed individuals and representatives of community-based organizations argued that oral bilingual assistance at the polls is a crucial need of language minorities. Some of the respondents noted that the provision of oral assistance at the polls appears to be left to the chance that a bilingual person will be appointed to work at a polling site in an area where language assistance is needed. For example, State Representative Laura De Herrera of Denver, Colorado, said that bilingual oral assistance at the polls in Denver is dependent upon political party committee people.[38] She commented that party committees

[27] John Navarrette, president, Fresno County Mexican American Political Association, interview in Fresno, Calif., on Dec. 9, 1980 (hereafter cited as Navarrette Interview).
[28] Ibid.
[29] Ibid.
[30] Young Interview.
[31] Ibid.
[32] Ibid.
[33] Delgado et al. Interview.
[34] Ibid.
[35] Federal Election Commission, "Bilingual Election Services, Volume III: A State of the Art Report," August 1979, p. 66 (hereafter cited as "Bilingual Election Services Report").
[36] Ibid.
[37] Ibid.
[38] Laura De Herrera, State representative, interview in Denver, Colo., Nov. 20, 1980.

recommend names to the county clerk, who selects the poll workers.[39] Similarly, in Texas the appointment of bilingual poll workers in areas where they are needed is left to the chance that election judges, who are appointed by county commissioners, are bilingual or will select bilingual clerks to serve during the election.[40]

Respondents in Fresno found the lack of bilingual precinct workers so acute that they complained to local election officials.[41] Fresno city council member Lionel Alvarado stated that election officials need to "reach out and get Hispanics to work the polls at election time."[42] He said oral assistance at polls in Fresno was needed because "Hispanics are intimidated just by the experience of going into the booth and using computerized cards."[43] He also said that poll workers should reflect the community.[44] Cruz Bustamante also commented on the need for oral assistance at the polls in Fresno, noting that a large number of language minorities in Fresno could not read well and often depended on their children to translate for them.[45] He stated that bilingual poll workers were needed because polls are often in Anglo homes or churches and that language minority voters feel unwelcome there, especially when they are not helped in their language.[46]

Respondents in Cherokee County, Oklahoma, also considered oral assistance at the polls to be an important need that is not being adequately met in Cherokee County. Agnes Cowan of the Cherokee Bilingual Center in Tahlequah expressed the view that the one bilingual interpreter the county election board makes available during elections is not enough.[47] She stated that the county election board at one time provided seven interpreters, but it decided that they were not adequately utilized and discontinued their use. Ms. Cowan remarked that the interpreters were not used because the American Indians did not know they were available.[48] Oral bilingual assistance, in her view, is necessary. Although Cherokees in the community, especially older persons, can understand and speak English, they have trouble comprehending documents. She stated, "Speaking English is one thing, but comprehension is what's important."[49]

Carolyn Swimmer and Gloria Sly, employees of the Cherokee Education Center in Tahlequah, commented that American Indian voters definitely need to have the State questions on the ballot explained, because there are a number of Cherokees who can speak both English and Cherokee but cannot read either language.[50] They also mentioned that oral interpreters are provided in Cherokee tribal elections.[51]

The representative of the League of United Latin American Citizens (LULAC) in Albuquerque, New Mexico, said that oral bilingual assistance was important and "undoubtedly has helped," because the bilingual people in his area are "not that fluent in reading material so oral assistance is of more benefit to them."[52] Mr. Mares also said that people were more comfortable voting when someone was there to assist them.[53]

The most significant effect of inadequate oral bilingual assistance at the polls is that it discourages future interest in voting. If a minority language voter goes to the poll and finds that such help is unavailable or is inadequate, then the voter may be discouraged from attempting to vote again. As several respondents noted, minority language voters can be easily intimidated by the entire voting process. According to representatives of community-based organizations, the best way to make voting a positive experience for language minorities is to have helpful, trained, oral bilingual assistants available at the polls. The failure of local jurisdictions to provide this help is a major factor in discouraging language minority citizens from effectively participating in the political process.

Publicity About Bilingual Services

A majority of the respondents remarked that when bilingual services are provided, their availability should be publicized. If the language minority

[39] Ibid.
[40] Tex. Elec. Code Ann. art. 3.01 (Vernon Supp. 1980).
[41] Navarrette Interview.
[42] Lionel Alvarado, city council member, interview in Fresno, Calif., Dec. 9, 1980 (hereafter cited as Alvarado Interview).
[43] Ibid.
[44] Ibid.
[45] Cruz Bustamante, MAPA member, interview in Fresno, Calif., Dec. 9, 1980 (hereafter cited as Bustamante Interview).
[46] Ibid. For the response of Fresno County to these statements, see appendix G of this report.
[47] Cowan Interview.
[48] Ibid.
[49] Ibid.
[50] Carolyn Swimmer, resource teacher, and Gloria Sly, community coordinator, Cherokee Education Center, interview in Tahlequah, Okla., Dec. 3, 1980 (hereafter cited as Swimmer and Sly Interview).
[51] Ibid. For the response of Cherokee County to these statements, see appendix G.
[52] Sam Mares, northern district director, League of United Latin American Citizens (LULAC), interview in Albuquerque, N.Mex., Nov. 17, 1980 (hereafter cited as Mares Interview).
[53] Ibid.

community is unaware that bilingual election services are available, it is obvious that the services, no matter how elaborate, will tend not to be used. John Trasvina of San Francisco remarked that the situation was analogous to "someone not inviting people to a party and complaining that all the food is left because no one showed up."[54]

Interviewees noted that jurisdictions can publicize the availability of bilingual election services both efficiently and inexpensively by having printed announcements and bilingual material available in places frequented by the language minority community. Bilingual public service announcements, notices in minority newspapers and magazines, or bilingual advertisements in the community newspaper are other ways jurisdictions can effectively publicize bilingual election services. Other forums for publicity of services discussed include providing speakers for church groups, community organizations, and neighborhood meetings or social gatherings.[55]

In general, most of the respondents, except those in San Francisco, remarked that there was little, if any, publicity about the availability of bilingual services. The LULAC representative in Albuquerque, New Mexico, said that "people don't know the bilingual material is there. Most members of the minority community are not aware of the bilingual election services that are available."[56]

In Tahlequah, Oklahoma, Waythene Young, president of the North American Indian Women's Association, said there was no publicity about the availability of bilingual election services, although "the county did advertise once" that people could call her organization about registration.[57] She said the county could better inform American Indians about bilingual election services by publicizing in the tribal newspaper and by asking to speak at community meetings.[58]

Community representatives in Fresno and Denver remarked that publicity about bilingual election services or the election was only made available by candidates and community groups. In Fresno the Mexican American Political Association (MAPA) representative said, "Most of the radio and TV spots were the result of community group effort."[59] The county, stressed Mr. Navarrette, "only does what is minimally required by law."[60] Remigio Pete Reyes of Denver stated that bilingual announcements on television and radio were done by candidates or the Southwest Voter Registration Education Project.[61] He also mentioned that candidate debates were televised on the educational television channel in Spanish and "the same thing should be done on the regular TV stations."[62] State Representative Laura De Herrera argued that bilingual radio and television programs that provide information on the political process, candidates, and issues are needed so that language minorities can more effectively exercise their voting rights.[63] She also remarked that the availability of written bilingual material at the polls should be better publicized so that people know it is available.[64]

The major effect of a jurisdiction's failure to inform the minority language community about bilingual election services is that the people who need these services are not aware that they are available and, consequently, do not use them.

Bilingual Written Material

Community-based organizations in San Francisco expressed the need for better provision of bilingual written material. Representatives of MAPA and Chinese for Affirmative Action in San Francisco indicated that the English-only version of the State-provided ballot pamphlet had limited value to minority language citizens. This pamphlet is provided in Chinese or Spanish to those who requested translated material when they registered. Those unaware of its unavailability in translated versions may request one later by sending in a request card. The English version, which is available to all voters, has captions on the cover in Chinese and Spanish stating that if voters want the pamphlet in Chinese or Spanish, they must request one by sending in a request card. Henry Der, executive director of Chinese for Affirmative Action, said, "Why would someone who doesn't read English even bother to flip through it," referring to the fact that a non-English-speaking person might be overwhelmed by

[54] Angie Alarcon, president, San Francisco Mexican American Political Association (MAPA), and members Ena Aguirre and John Trasvina, interview in San Francisco, Dec. 11, 1980 (hereafter cited as Alarcon et al. Interview).
[55] Mares, Young, Delgado, and De Herrera Interviews.
[56] Mares Interview.
[57] Young Interview.
[58] Ibid.
[59] Navarrette Interview.
[60] Ibid.
[61] Delgado et al. Interview.
[62] Ibid.
[63] De Herrera Interview.
[64] Ibid. For the responses of the city and county of Denver Election Commission and the Colorado Secretary of State's Licensing and Elections Division to these statements, see appendix G.

the amount of English material that must be gone through to find the card on which to request translated material.[65] John Trasvina of the San Francisco MAPA also expressed concern about the value of the State-provided pamphlet, saying that it was "rarely used and not useful for either English or non-English speakers" because it was written in "legalese."[66] Discussing written material provided in San Francisco, Ena Aguirre of MAPA, an elementary school principal, remarked that "the grade level of the written material doesn't reflect the population."[67]

The availability of bilingual electoral services was of utmost concern to the community-based organizations and individuals interviewed. Better bilingual assistance in registration and oral assistance at the polls were cited most frequently as the most important needs of the language minority community. The failure of jurisdictions to provide adequate bilingual services in these areas is seen by these community people as continuing to exclude minority language citizens from effective participation in the political process.

Cooperation of Local Election Officials

The community organizations and individuals expressed strong viewpoints as to why the needs of the language minority communities in their areas were not met. All but two interviewees placed principal responsibility for the unmet needs of the language minority community on local election officials. Only in San Francisco did representatives of minority organizations perceive that local election officials were trying to implement adequately the minority language provisions. (San Francisco has consented to a court decree to provide minority language assistance).[68]

In Tahlequah, Oklahoma, Agnes Cowan, of the Cherokee Bilingual Center, called for the participation of American Indian community leaders in the development of a successful bilingual election program in Cherokee County.[69] She noted that "Cherokees don't relate well to the county election board; there's a lot of fear and suspicion."[70] She said that participation by Indian leaders would help to alleviate their distrust of non-Indians that had resulted from their having been previously misled and taken advantage of.[71]

The respondents in Denver, particularly those who had campaigned there, said that local officials were not responsive to minority candidates. They stated that community organizations, such as the Southwest Voter Registration Education Project, had done more to register and educate voters in the minority language community than had local election officials.[72] The LULAC representative in Albuquerque said that local election officials should "contact local organizations. . .to maintain a continual dialogue and greater communication" about the needs of the language minority community.[73]

The belief of respondents that the needs of minority language citizens are not being met because of noncooperation by local election officials finds support in the FEC's survey of bilingual election services. This survey found that efforts to provide comprehensive bilingual voter services "have been extremely limited."[74] FEC attributed these limited efforts to:

> . . .a widespread misunderstanding on the part of local election administrators: firstly, that just formalistically making bilingual services available, without bringing them to the language minorities through the links of community organizations, will produce any great demand for them; and, secondly, that the point of the legislation is primarily to have bilingual forms available and that the appropriate measure of its success, therefore, is the number of bilingual forms used.[75]

The individuals and community organizations interviewed also provided recommendations for making compliance with the minority language provisions an attainable goal. Rolando Rios, of the Southwest Voter Registration Education Project, stated that the minority language regulations had to be made more specific and enforced so that it is clear what "jurisdictions must have for effective bilingual assistance."[76]

In San Francisco Henry Der, executive director of Chinese for Affirmative Action, remarked that the minority language provisions of the Voting

[65] Henry Der, executive director, Chinese for Affirmative Action, interview in San Francisco, Dec. 11, 1980 (hereafter cited as Der Interview).
[66] Alarcon et al. Interview.
[67] Ibid. For the response of the California Secretary of State to these statements, see appendix G.
[68] United States v. City and County of San Francisco, No. C-78 2521 CFP (N.D. Cal., May 8, 1980) (consent decree) (hereafter cited as U.S. v. City and County of San Francisco).
[69] Cowan Interview.
[70] Ibid.
[71] Ibid.
[72] Delgado et al. Interview.
[73] Mares Interview.
"Bilingual Election Services Report," p. 17.
[75] Ibid.
[76] Rios Interview.

Rights Act should be "amended to the degree that it specifies what constitutes effective participation by minority language voters."[77] He stated that the law should provide for more than the "technical system of providing [bilingual] materials and services."[78] He also thought it should provide for "increased participation in voter registration and voting."[79]

In response to a question as to what State officials could do to improve access to the political process for language minorities, the respondents provided several recommendations. Representatives of the American G.I. Forum of the United States in Denver thought that State election officials should "encourage the use of bilingual ballots"[80] in Colorado communities. That organization also said that State election officials should "support legislation liberalizing voter registration" so that more language minorities could be reached.[81] Rolando Rios of the Southwest Voter Registration Education Project argued that the State of Texas should establish "concrete regulations on how to enforce the State law" providing for bilingual election services.[82] In California, the Chinese for Affirmative Action and MAPA representatives agreed that State officials could improve access to the political process for language minorities by implementing the Voting Rights Act and California law on voting assistance to language minorities. Specifically, they noted that California's law requiring registrars to develop voter outreach plans[83] could be implemented better. Henry Der of Chinese for Affirmative Action stressed that the secretary of State is failing to take the lead to see that the State law is enforced.[84] He reported that his organization had filed a complaint with the secretary of State to the effect that San Francisco was not abiding by the State law in that it did not provide registration outreach in underregistered areas.[85] Mr. Der said his complaint was based on his organization's study showing that Chinatown's voter registration rate was one-half that of the majority community, but no action was ever taken on the complaint.[86]

The MAPA representatives in San Francisco agreed that the State should take action to enforce its law providing for voter outreach in underregistered areas. They called for the secretary of State to "make sure that the voter outreach plan that is filed for San Francisco is implemented"[87] by establishing a program "to monitor the voter outreach program."[88]

In conclusion, community-based organizations are concerned about practices that continue to impede the progress of language minorities in becoming informed and able to participate effectively in the electoral process. They believe these impediments can be removed by providing (1) bilingual services for registration and oral bilingual assistance at the polls, (2) improved publicity about the availability of bilingual services, and (3) better cooperation of local election officials.

Federal Enforcement of the Minority Language Provisions

Responsibility for enforcing compliance with the minority language provisions is delegated according to the coverage formula that applies to a jurisdiction. Jurisdictions covered under section 4(f)(4) are the responsibility of the Civil Rights Division of the Department of Justice. These jurisdictions are subject to both the minority language provisions and preclearance procedures. Responsibility for enforcement of the language provisions in jurisdictions covered under section 203 is delegated to U.S. attorneys whose regions include these jurisdictions.[89] Section 203 jurisdictions are subject only to

[77] Der Interview.
[78] Ibid.
[79] Ibid.
[80] Delgado et al. Interview.
[81] Ibid.
[82] Rios Interview.
[83] "It is the intent of the Legislature that voter registration be maintained at the highest possible level. The Secretary of State shall adopt regulations requiring each county to design and implement programs intended to identify qualified electors who are not registered voters, and to register such persons to vote. The Secretary of State shall adopt regulations prescribing minimum requirements for such programs. If the Secretary of State finds that a county has not designed and implemented a program meeting such prescribed minimum requirements, the Secretary of State shall design a program for such county and report the violation to the Attorney General." Cal. Elec. Code §304 (West 1977).
[84] Der Interview.
[85] Ibid.
[86] Ibid.
[87] Alarcon et al. Interview.
[88] Ibid. For the response of the California Secretary of State to these statements, see appendix G.
[89] Barry Weinberg, Deputy Chief, Voting Section, U.S. Department of Justice, telephone interview, Apr. 23, 1981. Mr. Weinberg stated that the decision to delegate responsibility for enforcement of the minority language provisions in section 203 jurisdictions to U.S. attorneys was made in November 1975. He was unaware of any correspondence or other written documentation occurring at that time. The first correspondence from the Department of Justice to the U.S. attorneys officially informing them of their section 203 enforcement responsibilities was in a memorandum of Oct. 22, 1976, from James P. Turner, Acting Assistant Attorney General, Civil Rights Division.

the requirements of the minority language provisions.[90]

Because section 4(f)(4) jurisdictions must preclear all election law changes with the Department of Justice, bilingual plans and procedures describing how the jurisdiction will comply with the language provisions are also reviewed under this process. As in other submissions, the jurisdiction must demonstrate to the Attorney General or the U.S. District Court for the District of Columbia that its bilingual plans and procedures are discriminatory neither in purpose nor effect.[91]

The Department of Justice provided the Commission with a list of section 4(f)(4) jurisdictions that have submitted bilingual plans and procedures for review. It also included information on those jurisdictions that the Department of Justice has requested to submit bilingual plans and procedures for preclearance. A review of this list indicates that a majority of section 4(f)(4) jurisdictions have submitted bilingual plans and procedures either on a State, county, or subdivision basis. In reviewing compliance with the minority language provisions, the Department of Justice has issued five objection letters related to bilingual plans and procedures—to Yuba County, California, on May 26, 1976; Monterey County, California, on March 4, 1977; to Lamar Consolidated Independent School District, Fort Bend County, Texas, on October 3, 1977; and to Apache County High School District, Arizona, on October 4, 1976, and on March 20, 1980.[92] The Department of Justice has withdrawn its objections except for that in Monterey County, California, and the one in the Apache County High School District issued on October 4, 1976.[93]

The types of problems that arise with bilingual plans are illustrated in the Apache County case. The Apache County High School District brought suit for a declaratory judgment in the U.S. District Court for the District of Columbia to preclear the bilingual plan for the August 31, 1976, bond election objected to by the Department of Justice.[94] The district court denied the Apache County High School District's request. The court found that the school district had "deliberately failed to inform the Navajos" about the election and the issues involved because it had not disseminated information in Navajo, had not sent information to Navajo chapter officials for distribution at meetings, and had not asked Navajo organizations about how to communicate adequately with the Navajo people.[95]

The court also found that the school district did not adequately provide for bilingual Navajo poll workers and limited the number of polling places on the Navajo Reservation to the detriment of Navajo voters.[96] Further, the court stated that the "diminution of voting places was done with that intent, and had that effect [of abridging protected voting rights]."[97] The court further stated that "information regarding the existence of and pertaining to the subject matter of an election is surely information necessary to cast an effective vote."[98]

The enforcement of the minority language provisions in jurisdictions subject only to the requirements of section 203 is not as easily determined as for section 4(f)(4) jurisdictions, which are subject to preclearance. Since responsibility for enforcement of compliance with the language provisions of section 203 is delegated to U.S. attorneys, no centralized enforcement mechanism is present. In fact, to gain information on the extent of Federal enforcement in section 203 jurisdictions, each U.S. attorney must be contacted individually.

To assess Federal compliance efforts in jurisdictions subject only to the minority language provisions, interviews were held with eight U.S. attorneys whose districts include section 203 jurisdictions. (See table 7.1.) They were also selected based on the applicable language minority groups in their districts. For example, the U.S. attorney districts for Colorado and New Mexico have the most section 203 jurisdictions covered for Spanish, the eastern district of Oklahoma has the most jurisdictions covered for American Indians, and the district of Hawaii has the most jurisdictions with an Asian American language (Japanese and Filipino). In addition, the jurisdictions in these U.S. attorney districts are covered solely by section 203.

Interviews with the eight U.S. attorneys revealed that none had any compliance procedures and only three had done any type of enforcement activity to help assure compliance with the minority language

[90] 28 C.F.R. §55.8(b) (1980).
[91] *Id.* §55.22.
[92] U.S., Department of Justice, Civil Rights Division, "Complete Listing of Objections Pursuant to Section 5 of the Voting Rights Act of 1965" (1980).
[93] Ibid.
[94] Apache County High School Dist. No. 90 v. United States, No. 77-1815 (D.D.C. June 12, 1980).
[95] *Id.*, slip op. at 4.
[96] *Id.*, at 5-6.
[97] *Id.*, at 14.
[98] *Id.*

TABLE 7.1 U.S. Attorneys Interviewed and Number of Jurisdictions Subject to Section 203 and Applicable Minority Language Group by U.S. Attorney District

U.S. attorney district	Total number of section 203 jurisdictions (counties)[1] in U.S. attorney district	Applicable minority language groups: Spanish heritage	American Indian	Asian American
Colorado	33	33	1	
New Mexico	32	32	5	
E.D. California	17	16	1	
E.D. Oklahoma	14		14	
N.D. California	9	9		1
N.D. Oklahoma	7		7	
Nevada	4	3	2	
Hawaii	3			3
	119	93	30	4

[1] Jurisdictions may be covered for more than one applicable minority language group. For example, in Colorado, one jurisdiction (Montezuma County) is covered for both Spanish and an American Indian Language.

Source: 28 C.F.R. Part 55, appendix, July 1, 1979, and telephone interviews with secretaries in U.S. attorneys' offices to determine which covered counties were in the U.S. attorneys' districts.

provisions in their regions. In general, the U.S. attorneys considered that it was not their role to seek out problems, but to wait for the submission of specific complaints. U.S. Attorney R.E. Thompson of New Mexico stated, "Not much manpower will be expended by U.S. attorneys unless there is a problem."[99]

B. Mahlon Brown, the U.S. attorney in Nevada, said, "I do not consider enforcement of section 203 of the Voting Rights Act to be a priority type of activity in this State."[100] He also stated, "I do not have formal procedures or a system for enforcing compliance with the minority language provisions. I will adhere to the law and apply it vigorously if a complaint is brought to my attention."[101]

In Hawaii, U.S. Attorney Walter Heen remarked that he was aware of the requirements of the minority language provisions, but he did not know whether his office was responsible for enforcing the provisions.[102] According to Mr. Heen, his office had never received a complaint regarding voting rights violations and none of his office's resources was allocated to voting rights.[103]

In response to a question regarding reasons why U.S. attorneys are not actively enforcing the language provisions, the assistant U.S. attorney for Colorado, Carole Dominguin, stated that U.S. attorneys do not have the resources to do compliance enforcement or investigations.[104] She also said that U.S. attorneys cannot monitor polls on election day because they would become witnesses and there would be problems in prosecuting later on.[105] Joe Dolan, the U.S. attorney for Colorado, stressed that another agency, such as the Community Relations Service of the Department of Justice, should evaluate compliance and do spot checking at the polls.[106] The U.S. attorney for the eastern district of Oklahoma, James Edmondson, stated that responsibility for enforcing compliance with the minority language provisions was "the major responsibility of the State election board" and "Federal resources should be maintained for prosecution."[107] HubertÁBryant, U.S. attorney for the northern district of Oklahoma, remarked that unless the Department of Justice "gives U.S. attorneys the manpower to do the job," responsibility for enforcing compliance with the

[99] R.E. Thompson, U.S. attorney, district of New Mexico, interview in Albuquerque, Nov. 17, 1980.
[100] B. Mahlon Brown, U.S. attorney, district of Nevada, interview in Las Vegas, Aug. 20, 1980.
[101] Ibid.
[102] Walter Heen, U.S. attorney, district of Hawaii, interview in Honolulu, Aug. 26, 1980.
[103] Ibid.
[104] Joe Dolan, U.S. attorney, district of Colorado, and Carole Dominguin, assistant U.S. attorney, interview in Denver, Nov. 20, 1980.
[105] Ibid.
[106] Ibid.
[107] James Edmondson, U.S. attorney, eastern district of Oklahoma, interview in Muskogee, Okla., Dec. 2, 1980.

minority language provisions should be given to the Department of Justice in Washington, D.C.[108] He stated that more support staff is needed if the U.S. attorney is supposed to seek out problems.[109]

In Colorado and the eastern district of California, some enforcement activity was found. In Colorado, the U.S. attorney sent out questionnaires to county clerks and community organizations in all of the State's jurisdictions covered under the minority language provisions, requesting information on their bilingual services and problems in implementation with the language provisions.[110] Toso Himel, assistant U.S. attorney in the eastern district of California, remarked that compliance enforcement in his office consisted of sending all covered jurisdictions letters prior to the last congressional election.[111] These letters were to remind the jurisdictions of their responsibilities under the act and to request samples of their bilingual materials.[112]

The U.S. attorney for the northern district of California, G. William Hunter, was asked what problems his office had in enforcing the minority language provisions. He responded that his enforcement efforts were like "firemen putting out fires."[113] He complained that his staff resources were limited and that he did not have the manpower continually to monitor voting rights.[114] Despite Mr. Hunter's problems with limited staff resources, he has managed successfully to enforce compliance with the minority language provisions in one of the largest covered jurisdictions in his district, San Francisco.

On May 19, 1980, a three-judge court in the U.S. District Court for the Northern District of California approved a consent decree in the case brought by the U.S. attorney, *United States v. City and County of San Francisco.*[115] In general, the consent decree provided that San Francisco make available Chinese- and Spanish-language voting and registration materials and provide assistance so that Chinese- and Spanish-speaking citizens of San Francisco could be "effectively informed of and effectively participate in the voting process for all primary, special and general elections."[116] The appointment of Federal examiners was also required by the decree.[117]

Under the consent decree, a voter outreach plan must be developed by the registrar. The city is required, among other things, to distribute bilingual voting and registration materials for Chinese- and Spanish-speaking citizens, work with community groups in identifying locations to distribute voter registration forms, identify underregistered language minority precincts, develop bilingual public service announcements, and administer a street corner registration program in underregistered Chinese- and Spanish-speaking precincts.[118]

Moreover, the consent decree provides for an extensive program to recruit, hire, and train bilingual poll workers. As part of this program, the registrar must identify Chinese- and Spanish-speaking precincts that will require Chinese- and Spanish-language assistance at the polls and "establish procedures to insure that such assistance will be available when and where needed."[119] Also required by the decree is the establishment of a citizens' task force to advise and assist the registrar and the implementation of an election hotline for voters to receive information in Chinese and Spanish on election day.[120]

Finally, the consent decree, which is in effect until August 6, 1985, requires that San Francisco provide the court and the U.S. attorney with preelection and postelection reports.[121] The preelection report is to include action taken in preparation for an election, a list of targeted precincts, bilingual poll workers assigned to those precincts, and samples of all election material prepared in English, Spanish, and Chinese. The postelection report is to indicate the manner in which the consent decree's provisions were complied with in the election.[122]

The San Francisco registrar of voters has three staff members who work exclusively in the area of compliance with the minority language provisions,

[108] Hubert Bryant, U.S. attorney, northern district of Oklahoma, interview in Tulsa, Dec. 4, 1980.
[109] Ibid.
[110] Dolan Interview.
[111] Toso Himel, assistant U.S. attorney, eastern district of California, interview in Sacramento, Aug. 19, 1980.
[112] Ibid.
[113] G. William Hunter, U.S. attorney, northern district of California, and Amanda Metcalf, assistant U.S. attorney, interview in San Francisco, Aug. 26, 1980.
[114] Ibid.
[115] U.S. v. City and County of San Francisco.
[116] *Id.*, consent decree at 3.
[117] *Id.*
[118] *Id.*, at 4-5.
[119] *Id.*, at 6.
[120] *Id.*, at 7.
[121] *Id.*, at 9.
[122] *Id.*

planning compliance efforts, recruiting bilingual poll workers, and publicizing.[123] According to the registrar's assistant in charge of implementing the minority language provisions, a total of 4,598 minority language citizens (3,206 Chinese- and 1,392 Spanish-speaking persons) were on their list for written bilingual material as of October 27, 1980.[124]

In its December 4, 1980, postelection report to the U.S. district court and U.S. attorney, the registrar of voters reported that whereas in 1978 the registrar had identified 55 precincts in need of bilingual poll workers, "2-1/2 years later, the number is up to 247."[125] The report also reveals that the registrar fully publicized San Francisco's bilingual election services and worked with community organizations such as Chinese for Affirmative Action.[126] The executive director of Chinese for Affirmative Action, Henry Der, in fact, helped the registrar set priorities for bilingual poll workers in Chinese precincts and provided assistance in recruiting bilingual poll workers.[127]

Unlike other jurisdictions, San Francisco's implementation of the minority language provisions has been carried out under court supervision. Planning bilingual election services, working with community organizations, publicity, recruitment, hiring, and training bilingual poll workers as well as the creation of innovative programs such as street corner registration and election-day bilingual hotlines are activities that San Francisco has shown can be accomplished.

In another civil suit, the Department of Justice's Civil Rights Division worked with the U.S. attorney for the district of New Mexico in filing suit to enforce the minority language provisions in San Juan County, New Mexico, a section 203 jurisdiction.[128] The Attorney General, on behalf of the United States, alleged that San Juan County violated the voting rights of American Indians in San Juan County by failing to provide (1) "oral instructions, assistance, and other information relating to the registration and voting process in the Navajo language whenever such information was provided in English";[129] (2) "adequate numbers of bilingual persons to serve as interpreters within each precinct in San Juan County serving Navajo voters in need of language assistance";[130] (3) adequate training for "bilingual interpreters in effective interpretation of all aspects of the ballot, including constitutional amendments, so that they may effectively render oral assistance to Navajo-speaking voters";[131] (4) "sufficient information concerning the location of polling places in the Navajo language";[132] and, (5) "sufficient oral instructions, assistance, and other information concerning all aspects of the voter registration process, absentee voting process, and voter purging process in the Navajo language."[133]

In a stipulation of April 8, 1980, both parties in this action agreed to settle the case without a trial.[134] The United States District Court for the District of New Mexico issued an order on April 8, 1980, adopting the stipulation as the order of the court and dismissing the complaint with prejudice.[135] The district court, also, retained jurisdiction until December 31, 1984, "to review any questions concerning compliance with the provisions of the Order approving this Stipulation."[136]

The stipulation of April 8, 1980, stated that San Juan County agreed to comply with the minority language provisions of the Voting Rights Act in preparing and conducting all elections within the county. Specifically, San Juan County agreed:

(1) To expand its "voter registration program to actively register Navajo voters."[137] This was to be done by establishing a voter registration office in Shiprock staffed by a deputy registration officer bilingual in Navajo and English during the 2 weeks preceding the registration deadline for countywide elections; appointing a minimum of 2 deputy registration officers who are bilingual in English and Navajo to each precinct in the county with a Navajo voting age population of 5 percent or more, as well as appointing at least 24 at-large deputy registration officers who are bilingual in English and Navajo; and announcing and publishing the establishment of the registration office, its

[123] Nancy Dillon, assistant to the San Francisco registrar of voters, interview in San Francisco, Dec. 10, 1980.
[124] Ibid.
[125] "Report of San Francisco Registrar of Voters to U.S. District Court, Northern District of California and U.S. Attorney," Dec. 4, 1980, p. 1.
[126] Ibid.
[127] Ibid.
[128] United States v. County of San Juan, New Mexico, No. 79-508 JB (D.N. Mex. Apr. 8, 1980).
[129] *Id.*, Plaintiff's Complaint at 4.
[130] *Id.*
[131] *Id.*
[132] *Id.*
[133] *Id.*
[134] *Id.*, Stipulation at 2.
[135] United States v. County of San Juan, New Mexico, No. 79-508 JB (D.N. Mex. Apr. 1980) (order adopting stipulation as order of the court).
[136] *Id.*, Stipulation at 6.
[137] *Id.* at 2.

location, dates and hours of operation, the availability of bilingual assistance, and registration deadlines on two radio stations with Navajo-language programs and in English in two newspapers in the county 2 weeks before each election's registration deadline.[138]

(2) To provide "more comprehensive recruitment and enlistment of bilingual poll officials and interpreters." This was to be done by enlisting a minimum of two bilingual interpreters and one alternate to serve at polling places in each precinct with a 5 percent or more Navajo voting-age population.[139]

(3) To expand poll worker training. The program for poll officials and all county employees involved in the electoral process is to provide information on Federal bilingual voting requirements, the bilingual registration and voting procedures undertaken by the county to comply with the Voting Rights Act, and to provide instruction on methods of rendering effective assistance to Navajo-speaking voters.[140]

(4) To provide each polling place in those precincts with a 5 percent or more Navajo voting-age population a list of all registered voters so as to allow bilingual interpreters to assist Navajo-speaking voters to locate their proper polling place.[141]

(5) To expand their program for adequate translation of all voting information for communication in Navajo. The county also agreed to continue to distribute voter information in Navajo through means designed to reach Navajo-speaking voters.[142]

(6) To announce three times each week on two Navajo radio programs and to publish twice in two English language newspapers all information concerning offices and candidates on the ballot, constitutional amendments, referendum issues, other issues on the ballot, eligibility to vote in the election, and all other voting information during the 2-week period preceding each election.[143]

San Juan County, New Mexico, then, is another illustration of Federal enforcement of the minority language provisions in a section 203 jurisdiction. Effective enforcement of the minority language provisions in all section 203 jurisdictions, however, has not been consistent.

Conclusion

Compliance with the minority language provisions of the Voting Rights Act varies among covered jurisdictions. The effect of a jurisdiction's failure to comply with the language provisions or to make more than minimal effort to comply is that language minorities are excluded from full participation in the electoral process. The lack of bilingual voter education services, of bilingual oral assistance for registering and voting, and of publicity about the availability of bilingual election services was found to hamper severely the effectiveness of the minority language provisions and to limit the ability of language minorities to register and vote.

Achieving full compliance will require greater enforcement of the minority language provisions. Currently, enforcement of the provisions covering section 4(f)(4) jurisdictions (jurisdictions that must provide minority language assistance and preclear changes in election law) is the responsibility of the Civil Rights Division of the Department of Justice. Enforcement of the provisions in section 203 jurisdictions (jurisdictions that only have to provide minority language assistance) has been delegated to U.S. attorneys. Interviews with eight U.S. attorneys show that little is being done in their jurisdictions to enforce these provisions. None of the U.S. attorneys monitors elections or confers with community-based organizations to determine the needs of the language minority community and whether they are being met, although two had engaged in some type of compliance activity. Implementation of the minority language provisions has been inconsistent and uneven. It is evident that meaningful participation in the political process for language minorities is a promise yet to be fulfilled.

[138] *Id.* at 3.
[139] *Id.* at 4.
[140] *Id.*
[141] *Id.* at 5.
[142] *Id.*
[143] *Id.*

Chapter 8

Findings and Recommendations

Findings

Results of the Voting Rights Act

1. The number of minorities who have been elected to public office has increased since the Voting Rights Act was extended in 1975.

a. In 1974, 964 blacks held public office in the six States, plus North Carolina, that were subject to preclearance in 1965 and 1970. In July 1980, 2,042 blacks served as elected officials in these States.

b. In 1979–80, 1,138 Hispanics had been elected to public office in Arizona and Texas, the two States made subject to preclearance by the 1975 amendments to the Voting Rights Act.

Despite considerable progress, however, minorities continue to constitute a small percentage of elected officials in virtually all States covered under the preclearance provisions. Blacks constitute no more than 8 percent of all elected officials in Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia. Hispanics constitute 13 percent of all elected officials in Arizona and 6 percent in Texas. Most minority elected officials are in local positions, such as school board members. Few minorities have been elected to the U.S. Congress, to State senates, to county governing boards, or to law enforcement positions, such as sheriff or county judge.

2. The number of minorities who have registered since the initial passage of the Voting Rights Act has been substantial. For example, 7 percent of voting age blacks in Mississippi were registered immediately prior to the passage of the act. Within 2 years, 60 percent of voting age blacks in Mississippi were registered. Registration rates for minorities continue to lag well behind the rates for whites, however. According to a 1976 Bureau of the Census survey of registration in jurisdictions covered by the preclearance provisions of the Voting Rights Act, between 63 and 78 percent of whites were registered in these jurisdictions, contrasted with between 48 and 67 percent of minorities. Only two States under statewide preclearance coverage (Louisiana and South Carolina) and North Carolina maintain registration data by race. In two of these States—Louisiana and North Carolina—black registration rates in 1980 continued to be substantially lower than white registration rates. In Louisiana, South Carolina, and North Carolina the white registration rates were 76 percent, 62 percent, and 72 percent; in contrast, the black registration rates were 61 percent, 56 percent, and 55 percent, respectively.

Continuing Problems in Registration

3. In the Commission's study of voting problems in 70 jurisdictions covered by the preclearance provisions, some minorities found registration officials discourteous or openly hostile and intimidating when they attempted to register. Requests for unnecessary personal information by officials also were found to intimidate minorities. Building on the blatant and pervasive discrimination against them in

the past, the present attitudes of registrars deter minorities from registering.

4. Registration in the jurisdictions studied often took place in locations (e.g., county courthouses) or at times that were particularly inconvenient for minorities, a disproportionate number of whom are poor and live in rural areas unserved by public transportation.

5. Alternative registration procedures, including the use of deputy registrars and satellite registration offices in minority communities, could result in substantial increases in minority registration. Minority organizations, however, have had a difficult time convincing registration officials of the need for such alternative procedures. Some have had to appeal to State legislators or to other officials or organizations to obtain more accessible registration.

6. In two instances the section 5 preclearance process prevented the implementation of purging and reregistration procedures that could have had a negative effect on the number of minorities who were registered to vote.

Continuing Problems in Voting

7. In several jurisdictions studied, all polling places were located in predominantly white communities or in buildings that housed all-white organizations or were in areas not served by public transportation. Such locations deter minorities from voting.

8. Two States, Louisiana and Mississippi, enacted legislation restricting assistance to illiterates. The Department of Justice objected to the legislation submitted by Mississippi, but not to that from Louisiana. Commission interviews in Louisiana indicated that some blacks in that State who needed assistance at the polls were unable to vote as a result of this legislation.

9. Minorities continued to be harassed or intimidated by election officials when they attempted to vote.

Continuing Problems in Fair Representation

10. In jurisdictions subject to preclearance that were included in the Commission study, minorities faced numerous barriers to electing the candidates of their choice. These barriers included the following:

a. Minorities have rarely been able to win elections in the large number of jurisdictions subject to preclearance that have at-large election systems and where racial bloc voting exists. The use of at-large election systems severely limits the ability of minority communities to elect the candidates of their choice.

b. Numerous voting rules continue to limit the ability of minorities to be elected to public office. These rules, which dilute minority voting strength, include majority vote requirements, anti-single-shot voting rules, numbered posts, residency requirements, and staggered terms. These rules often are coupled with at-large election systems. The result is that minority voting strength is substantially weakened in jurisdictions where racial bloc voting continues to be the predominant political pattern, and minority candidates have little or no opportunity to win election.

c. Annexations and consolidations have had a negative effect on minority voting strength. Some jurisdictions have attempted to annex predominantly white areas or areas zoned for middle-income housing, thereby decreasing minority voting strength in the annexing jurisdiction. Other jurisdictions have refused to annex predominantly minority areas even though these areas have sought annexation.

d. Jurisdictions have drawn boundaries with the purpose or effect of diluting minority voting strength. They have split areas with a high concentration of minorities into several districts, so that minorities do not represent a substantial proportion of the population in any district. They also have created redistricting plans in which minority voting strength in the new districts is less than that in existing districts.

e. Some minorities who attempt to run for political office are intimidated, harassed, or threatened. Often they do not have the same access to all voters as do white candidates because predominantly white civic and partisan organizations do not support their candidacies.

Preclearance and Noncompliance

11. The Department of Justice issued objections to over 700 proposed changes submitted by jurisdictions subject to preclearance between 1975 and 1980. Most of these proposed changes involved election rules which, if they had been implemented, would have diluted minority voting strength. The largest number of proposed changes involved attempts to annex predominantly white areas or areas zoned for middle-income housing. Other changes to which the Department of Justice frequently objected included

changes to at-large election systems and to the use of the majority vote rule, which requires winning candidates to receive a majority of the votes cast rather than a plurality.

12. Although covered jurisdictions are required to preclear all proposed changes in election rules with the Department of Justice or the U.S. District Court for the District of Columbia, this requirement is sometimes violated. Moreover, some jurisdictions have implemented changes to which the Department of Justice has interposed objections without obtaining the required declaratory judgment of nondiscrimination from the U.S. District Court for the District of Columbia, in violation of section 5 of the Voting Rights Act.

Minority Language Provisions

13. Lack of bilingual voter education services, bilingual oral assistance for registering and voting, and the lack of publicity about the availability of bilingual election services severely hampers the effectiveness of the minority language provisions and limits the ability of language minorities to register and vote.

14. There has been minimal enforcement of the minority language provisions by most of the eight U.S. attorneys interviewed.

Recommendations

Extension of the Voting Rights Act

1. **Prior to August 6, 1982, Congress should extend for an additional 10 years the special provisions of the Voting Rights Act.**

Despite increased political participation by minorities in many jurisdictions covered by the special provisions of the Voting Rights Act, minorities continue to face a variety of problems which the act was designed to overcome. This report has documented white resistance and hostility by some State and local officials to increased minority participation in virtually every aspect of the electoral process. It also has documented the resistance of many local jurisdictions to following either the letter or spirit of the preclearance provisions of the Voting Rights Act.

Commission research found that minorities continue to be excluded from full participation in the political process in jurisdictions subject to preclearance. For example, harassment and intimidation of minority voters and candidates persist, and registration still is inaccessible to minorities living in rural areas. In many jurisdictions subject to preclearance, the political position of minorities continues to be precarious. With the goal of providing long-term protections for minority participation in the political process, the Commission, therefore, recommends that the provisions of the Voting Rights Act being considered for extension in 1982 should be extended through 1992, an additional 10 years. It also recommends that those jurisdictions covered by the 1970 and 1975 amendments to the act be covered until 1992 as well.

Extension of the special provisions of the act would mean that the Department of Justice could send Federal examiners and observers to areas where complaints concerning the integrity of registration and election activities continue. It would also mean that covered jurisdictions would have to preclear their redistricting and reapportionment plans developed as a result of the 1980 and 1990 census. This report has shown that unfair redistricting is one of the major mechanisms preventing full minority participation in the political process.

2. **Prior to August 6, 1982, Congress should extend for an additional 7 years the minority language provisions of the Voting Rights Act.**[1]

Minority language citizens, many of whom are from families that have lived in this Nation for generations, continue to face barriers in registering and in voting because of their difficulty with the English language. High illiteracy rates and the denial of equal educational opportunities have impeded the progress of language minorities in achieving full access to the political process.

Although bilingual oral assistance in registering and in voting was found by Commission research to be the most important type of bilingual election service needed, minority organizations felt that such assistance was frequently not adequate. The lack of bilingual voter education services and publicity concerning the availability of bilingual election services were other areas found to limit the political participation of language minority citizens.

Although these provisions are not due for consideration for extension until August 6, 1985, the Commission recommends that the minority language provisions of the Voting Rights Act be extended for

[1] See dissent of Commissioner Stephen Horn.

7 years. This extension would make uniform the expiration dates of all of the act's special provisions. It would also provide more time to jurisdictions that have not yet fully implemented the minority language provisions so that they can adequately plan and implement assistance to language minority citizens as intended by Congress.

3. **Congress should amend section 2 of the Voting Rights Act to prohibit all States or political subdivisions from maintaining or establishing voting practices or procedures that have the "effect" of discriminating on the basis of race, color, or inclusion in a minority language group.**

Section 2 of the Voting Rights Act[2] is a nationwide provision. Lawsuits filed under this section have involved challenges by minorities to alleged discriminatory voting practices or procedures in jurisdictions not covered by the special provisions of the Voting Rights Act. Lawsuits under this section have also involved challenges to alleged discriminatory practices or procedures in jurisdictions covered by the special provisions, but where the challenged practice or procedure was instituted prior to the effective date of coverage under the act.

Section 2 prohibits States or political subdivisions from using voting practices or procedures that "deny or abridge the right of any citizen. . .to vote on account of race or color"[3] or inclusion in a minority language group.[4] The Commission's recommendation would change this section to prohibit jurisdictions from maintaining or establishing voting practices or procedures that have the "effect" of "denying or abridging the right to vote on account of race or color" or inclusion in a minority language group.

Commission field research and objection letters issued by the Department of Justice have shown that efforts to establish voting practices or procedures having a discriminatory effect on minorities continue. For example, a jurisdiction's effort to annex a predominantly white residential area may have the effect of decreasing substantially the minority population in the annexing jurisdiction. This decrease could dilute the political strength of the minority community, resulting in the community's inability to elect candidates of its choice. Similarly, a requirement that illiterate persons can only receive voting assistance from election workers, instead of from persons of their choice, may discourage those persons from voting if there are no minority election workers and they feel intimidated by white election workers.

The effects of certain practices and procedures can be the result of past and present intentional discrimination against minorities or the result of a jurisdiction's insensitivity to minority interests. Since some jurisdictions do not consider the effects of their voting practices and procedures on their minority populations, it is important that minorities themselves have some effective mechanism for seeking redress. The Commission's recommendation to amend section 2 would provide that mechanism.

4. **Congress should hold hearings to determine whether a nationwide Federal election law that provides minimum standards for registering and voting in Federal elections should be implemented.**

Commission research in jurisdictions subject to preclearance found that certain voting practices and procedures limited the ability of persons to exercise their right to vote effectively. Practices such as denying a person the right to take a self-marked sample ballot into the poll, not allowing an illiterate person to secure assistance in voting from an individual of his or her choice, and failing to make registration more accessible to rural, low-income persons may also be barriers to other voters regardless of where they live.

The Commission recommends that Congress hold hearings to determine if practices such as those found in covered jurisdictions are pervasive nationwide and whether a Federal election law setting certain minimum standards for registering and voting should be implemented. The Federal election law would identify those areas Congress finds to be so fundamental to the electoral process that should not be denied to any citizen.

Enforcement of the Voting Rights Act

5. **Congress should amend the Voting Rights Act to provide for civil penalties or damages against State and local officials who fail to comply with the preclearance provisions of the Voting Rights Act.**

This report has documented the continuing refusal by some jurisdictions covered by the Voting Rights Act to comply with the preclearance provisions of section 5. Either they fail to preclear their election law changes or they implement them despite the Department of Justice's objection. This continuing

[2] 42 U.S.C. §1973 (1976).
[3] *Id.*
[4] 42 U.S.C. §1973b(f)(2) (1976).

violation of the Voting Rights Act significantly diminishes the voting rights of minorities.

More effective enforcement is needed if minorities are to achieve full participation in the political process. One means of making it more effective is to provide for civil penalties or damages against State and local officials who violate the Voting Rights Act, with damages being awarded to the individual or organization seeking to enforce the act.[5]

6. **Congress should amend the Voting Rights Act by adding a section which places an affirmative responsibility on the Attorney General to enforce more vigorously compliance with the preclearance provision of section 5.**

Commission review of information received from civil rights organizations indicated that jurisdictions do not always comply with section 5 preclearance requirements. Some jurisdictions were even found to implement election changes despite having received an objection from the U.S. Department of Justice.

To ensure that jurisdictions required to submit election law changes do, in fact, submit them, the Commission recommends that the act be amended to place an affirmative responsibility on the Attorney General to enforce more vigorously compliance with section 5. This amendment to the act should require the Attorney General to devise forthwith systematic procedures for reviewing compliance with section 5. One of these procedures might include, for example, a requirement that all jurisdictions subject to section 5 submit a yearly report identifying their election law changes and whether or not they have been submitted.

7. **The Department of Justice should amend its guidelines on implementation of the minority language provisions to include specific criteria for determining effective minority language assistance.[6]**

Current Department of Justice guidelines provide only that "materials and assistance should be provided in a way designed to allow members of applicable language minority groups to be informed of and participate effectively in voting-connected activities."[7] Lack of specific criteria has resulted in inadequate assistance to minority language voters. For example, Commission research indicates that oral assistance is a major need of the minority language community that is not being met. So that covered jurisdictions may provide minority language assistance more thoroughly and efficiently, criteria should be developed by the Department of Justice specifying what constitutes effective minority language assistance.

8. **The Attorney General should provide for effective enforcement of the minority language provisions in jurisdictions subject to section 203 of the Voting Rights Act by requiring U.S. attorneys to monitor regularly compliance with the provisions in every section 203 jurisdiction in their districts.[8]**

Responsibility for enforcing the minority language provisions in section 203 jurisdictions is delegated to U.S. attorneys. Research by the Commission indicates that U.S. attorneys interviewed who have the most jurisdictions covered solely under section 203 in their districts are doing little, if anything, to provide continuous, ongoing compliance monitoring. The eight U.S. attorneys interviewed have no compliance procedures, no contact with minority community organizations, and do not monitor elections to determine if minority language assistance is, in fact, being provided. More effective monitoring of the minority language provisions would aid in ensuring that they are implemented in section 203 jurisdictions. Most important, the ability of minority language citizens to participate effectively in the political process would be enhanced.

[5] This recommendation also was made in the Commission's 1975 study. U.S., Commission on Civil Rights, *The Voting Rights Act: Ten Years After*, p. 346.

[6] See dissent of Commissioner Stephen Horn.

[7] 28 C.F.R. §55.2(b) (1980).

[8] See dissent of Commissioner Stephen Horn.

Statement of Commissioner Stephen Horn on the Minority Language Provisions of the Voting Rights Act

I do not concur with the arguments made by the Commission staff and my colleagues in chapter 7, "The Minority Language Provisions of the Voting Rights Act." Nor do I concur with recommendations 1, 2, 3, 4, and 5 in chapter 8 as they pertain to the extension and implementation of that portion of the act.

To argue that the provision of "equal protection of the laws" includes voting rights assistance in the language of some minority group members and not others is to pervert the meaning of a Constitution which was designed to protect the individual. Equal protection is not a matter of group protection; it is a matter of individual protection. The 1970 national census recorded 96 mother tongues where languages other than English were the *primary* languages in the households in which many of our fellow citizens were raised. The 1980 census coded 387 non-English-language possibilities, 180 of which were spoken by various tribes and groups of American Indians. As we can readily see, to continue to aid with specialized electoral services those who are in a few but not most minority language groups is itself discriminatory. To provide *governmental* assistance to aid one or even a handful of speakers of any of these possible 387 languages is also absurd. To assure equal protection of the laws, there is one solution which is dictated by common sense: "If one wishes to cast a ballot in the United States of America, one should learn as much English as is necessary to fulfill that limited, but fundamental, aspect of citizenship." Such a national policy would not stop a friend or relative who speaks the primary language of the citizen from writing out instructions or from marking a sample ballot for the individual who needs assistance. Such a national policy would not stop community-based ethnic groups from rendering assistance to those less familiar with English than others. Such groups have been readily available for each immigrant wave. What such a policy would stop is the illusion that for every language group in the Nation a government agent must be employed or some form of government assistance must be made available to aid all members who understand English less well than their native language.

Presumably, naturalized citizens had to learn some English in order to receive citizenship. Before this Nation goes the way of Quebec or engages in the bitter language-based quarrels of some of the fragmented states of India, I recommend that we call a halt to what many of us have long recognized as a misguided experiment. I thus urge Congress not to extend the minority language provisions of the Voting Rights Act.

Appendix A

Table A.1 Jurisdictions Discussed in Report

State	Specific jurisdiction	Minority group
Alabama	Hale County	black
	Hurtsboro*	black
	Lee County*	black
	Mobile	black
	Montgomery County	black
	Opelika*	black
	Pike County	black
Arizona	Apache County	American Indian
	Phoenix*	Hispanic
California	Fresno County*	Hispanic
	San Francisco County*	Chinese, Hispanic
Colorado	Denver County*	Hispanic
Georgia	Burke County	black
	Butts County	black
	Calhoun County	black
	Clay County	black
	College Park	black
	Dawson	black
	Dooly County	black
	Johnson County*	black
	Peach County	black
	Taliaferro County	black
	Wrightsville*	black
Louisiana	East Baton Rouge Parish	black
	East Carroll Parish	black
	Lafayette Parish*	black
	New Orleans*	black
	Ouachita Parish	black
	Plaquemines Parish*	black
	St. Landry Parish*	black
Mississippi	Greenwood	black
	Hinds County*	black
	Jackson*	black
	Lee County	black
	Port Gibson*	black
	Warren County	black
New Mexico	Albuquerque	Hispanic
	San Juan County	American Indian
New York	Bronx County*	Hispanic
	Kings County*	Hispanic
North Carolina	Halifax County*	black
	Roanoke Rapids*	black
	Wilson*	black

Table A.1 Jurisdictions Discussed in Report (continued)

State	Specific jurisdiction	Minority group
Oklahoma	Cherokee County*	American Indian
South Carolina	Charleston County	black
	Colleton County	black
	Dillon County	black
	Florence County*	black
	Georgetown County*	black
	Hampton County	black
	Marion County*	black
South Dakota	Shannon County	American Indian
	Todd County	American Indian
Texas	Aransas County	Hispanic
	Atascosa County*	Hispanic
	Bexar County	Hispanic
	Crockett County	Hispanic
	Dallas	Hispanic
	Frio County*	Hispanic
	Houston	black, Hispanic
	Jim Wells County	Hispanic
	Lockhart	Hispanic
	Medina County*	Hispanic
	Raymondville	Hispanic
	San Antonio*	Hispanic
	Taylor	Hispanic
	Terrell County	Hispanic
Virginia	Emporia*	black
	Greensville County	black
	Hopewell*	black
	Newport News	black
	Norfolk*	black
	Richmond	black

* Indicates jurisdictions visited by Commission staff.

Appendix B

JURISDICTIONS COVERED UNDER THE VOTING RIGHTS ACT OF 1965 AS AMENDED IN 1970 AND 1975

Table B.1 Coverage Limited to the Original Special Provisions of the Voting Rights Act

State/county
ALABAMA
CONNECTICUT*
(Towns)
Groton
Mansfield
Southbury
GEORGIA
IDAHO*
Elmore
LOUISIANA
MASSACHUSETTS*
(Towns)
Amherst
Ayer
Belchertown
Bourne
Harvard
Sandwich
Shirley
Sunderland
Wrentham
MISSISSIPPI

State/county
NEW HAMPSHIRE*
(Towns)
Antrim
Benton
Boscawen
Millsfield Township
Newington
Pinkhams Grant
Rindge
Stewartstown
Stratford
Unity
NORTH CAROLINA
Anson
Beaufort
Bertie
Bladen
Camden
Caswell
Chowan
Cleveland
Craven
Cumberland
Edgecombe
Franklin
Gaston
Gates
Granville

State/county
Greene
Guilford
Halifax
Harnett
Hertford
Lee
Lenoir
Martin
Nash
Northampton
Onslow
Pasquotank
Perquimans
Person
Pitt
Rockingham
Scotland
Union
Vance
Washington
Wayne
Wilson
SOUTH CAROLINA
VIRGINIA
WYOMING*
Campbell

* Covered under 1970 amendments to the Voting Rights Act.

Table B.2 Coverage Limited to the Minority Language Provisions of the Voting Rights Act

State/county	Language minority group
CALIFORNIA	
Alameda	Spanish
Amador	Spanish
Colusa	Spanish
Contra Costa	Spanish
Fresno	Spanish
Imperial	Spanish
Inyo	American Indian
Kern	Spanish
Lassen	Spanish
Los Angeles	Spanish
Madera	Spanish
Napa	Spanish
Orange	Spanish
Placer	Spanish
Riverside	Spanish
Sacramento	Spanish
San Benito	Spanish
San Bernardino	Spanish
San Diego	Spanish
San Francisco	Spanish, Chinese
San Joaquin	Spanish
San Luis Obispo	Spanish
San Mateo	Spanish
Santa Barbara	Spanish
Santa Clara	Spanish
Santa Cruz	Spanish
Sierra	Spanish
Solano	Spanish
Sonoma	Spanish
Stanislaus	Spanish
Sutter	Spanish
Tulare	Spanish
Tuolumne	Spanish
Ventura	Spanish
Yolo	Spanish
COLORADO	
Adams	Spanish
Alamosa	Spanish
Archuleta	Spanish
Bent	Spanish
Boulder	Spanish
Chaffee	Spanish
Clear Creek	Spanish
Conejos	Spanish
Costilla	Spanish
Crowley	Spanish
Delta	Spanish
Denver	Spanish
Eagle	Spanish
Fremont	Spanish
Huerfano	Spanish
Jackson	Spanish
Lake	Spanish
La Plata	Spanish
Las Animas	Spanish
Mesa	Spanish
Moffat	Spanish
Montezuma	Spanish, American Indian
Montrose	Spanish
Morgan	Spanish
Otero	Spanish
Prowers	Spanish
Pueblo	Spanish
Rio Grande	Spanish
Saguache	Spanish
San Juan	Spanish
San Miguel	Spanish
Sedgwick	Spanish
Weld	Spanish
CONNECTICUT (towns)	
Bridgeport (Fairfield County)	Spanish
FLORIDA	
Dade	Spanish
Glades	American Indian
HAWAII	
Hawaii	Filipino, Chinese
Kaui	Filipino, Japanese
Maui	Filipino
IDAHO	
Bingham	American Indian
Cassia	Spanish
KANSAS	
Finney	Spanish
Grant	Spanish
Wichita	Spanish
MAINE	
Passmaquoddy Pleasant Point Indian Reservation	American Indian
MICHIGAN	
Orangeville Township (Barry County)	Spanish
Sugar Island Township (Chippewa County)	American Indian
Imlay Township (Lapeer County)	Spanish
Adrian City (Lenawee County)	Spanish
Madison Township (Lenawee County)	Spanish
Grant Township (Newaygo County)	Spanish
Saginaw City (Saginaw County)	Spanish
MINNESOTA	
Beltrami	American Indian
Cass	American Indian
MONTANA	
Blaine	American Indian
Glacier	American Indian
Hill	American Indian
Lake	American Indian
Roosevelt	American Indian
Rosebud	American Indian
Valley	American Indian
NEBRASKA	
Scotts Bluff	Spanish
Thurston	American Indian
NEVADA	
Elko	Spanish, American Indian
Mineral	American Indian
Nye	Spanish
White Pine	Spanish
NEW MEXICO	
Bernalillo	Spanish
Catron	Spanish
Chaves	Spanish
Colfax	Spanish
Curry	Spanish
De Baca	Spanish
Dona Ana	Spanish
Eddy	Spanish
Grant	Spanish
Guadalupe	Spanish
Harding	Spanish
Hidalgo	Spanish
Lea	Spanish
Lincoln	Spanish
Los Alamos	Spanish
Luna	Spanish
McKinley	American Indian, Spanish
Mora	Spanish
Otero	Spanish
Quay	Spanish

TABLE B.2 Coverage Limited to the Minority Language Provisions of the Voting Rights Act (continued)

State/county	Language minority group
NEW MEXICO (Cont'd)	
Rio Arriba	American Indian, Spanish
Roosevelt	Spanish
Sandoval	American Indian, Spanish
San Juan	American Indian, Spanish
San Miguel	Spanish
Sante Fe	Spanish
Sierra	Spanish
Socorro	Spanish
Taos	American Indian, Spanish
Torrance	Spanish
Union	Spanish
Valencia	American Indian, Spanish
NORTH CAROLINA	
Swain	American Indian
NORTH DAKOTA	
Benson	American Indian
Dunn	American Indian
McKenzie	American Indian
Mountrail	American Indian
Rolette	American Indian
OKLAHOMA	
Adair	American Indian
Blaine	American Indian
Caddo	American Indian
Cherokee	American Indian
Choctaw	American Indian
Coal	American Indian
Craig	American Indian
Delaware	American Indian
Harmon	Spanish
Hughes	American Indian
Johnston	American Indian
Latimer	American Indian
McCurtain	American Indian
McIntosh	American Indian
Mayes	American Indian
Okfuskee	American Indian
Okmulgee	American Indian
Osage	American Indian
Ottawa	American Indian
Pawnee	American Indian
Pushmataha	American Indian
Rogers	American Indian
Seminole	American Indian
Sequoyah	American Indian
Tillman	Spanish
OREGON	
Jefferson	American Indian
Malheur	Spanish
SOUTH DAKOTA	
Bennett	American Indian
Charles Mix	American Indian
Corson	American Indian
Lyman	American Indian
Mellette	American Indian
Washabaugh	American Indian
UTAH	
Carbon	Spanish
San Juan	American Indian
Tooele	Spanish
Uintah	American Indian
WASHINGTON	
Adams	Spanish
Columbia	Spanish
Grant	Spanish
Okanogan	American Indian
Yakima	Spanish
WISCONSIN (towns)	
Nashville Town (Forest County)	American Indian
Bovina Town (Outagamie County)	Spanish
Oneida Town (Outagamie County)	American Indian
Hayward City (Sawyer County)	American Indian
WYOMING	
Carbon	Spanish
Fremont	American Indian
Laramie	Spanish
Sweetwater	Spanish
Washakie	Spanish

TABLE B.3 Combined Coverage Under the Preclearance Provisions and the Minority Language Provisions of the Voting Rights Act

State/county	Language minority group
ALASKA	Alaskan Native (statewide)
ARIZONA	Spanish (statewide)
Apache	American Indian
Coconino	American Indian
Navajo	American Indian
Pinal	American Indian
CALIFORNIA	
Kings	Spanish
Merced	Spanish
Monterey	Spanish
Yuba	Spanish
COLORADO	
El Paso	Spanish
FLORIDA	
Collier	Spanish
Hardee	Spanish
Hendry	Spanish
Hillsborough	Spanish
Monroe	Spanish
HAWAII	
Honolulu	Filipino, Japanese
LOUISIANA	
St. Bernard Parish	Spanish
MICHIGAN	
Clyde Township (Allegan County)	Spanish
Buena Vista Township (Saginaw County)	Spanish
MISSISSIPPI	
Neshoba	American Indian
NEW YORK	
Bronx	Spanish
Kings	Spanish
New York	Spanish
NORTH CAROLINA	
Hoke	American Indian
Jackson	American Indian
Robeson	American Indian
SOUTH DAKOTA	
Shannon	American Indian
Todd	American Indian
TEXAS	Spanish (statewide)
VIRGINIA	
Charles City	American Indian

Source: 28 C.F.R. Part 51 (1980), Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, Appendix-Jurisdictions covered under Section 4 (b) of the Voting Rights Act, as Amended and 28 C.F.R. Part 55 (1980), Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, Appendix-Jurisdictions covered under Sections 4 (f) (4), and 203 (c) of the Voting Rights Act of 1965, as amended by the Voting Rights Act Amendments of 1975.

Appendix C
Observer and Examiner Statistics

Table C.1 Observation of Elections Under the Voting Rights Act of 1965

State and county	Number of observers					
	1975	1976	1977	1978	1979	1980
ALABAMA						
Bullock	0	0	0	32	0	0
Choctaw	0	14	0	0	0	0
Conecuh	0	0	0	0	0	93
Dallas	0	42	0	0	0	0
Hale	0	0	0	82	0	49
Marengo	0	0	0	195	0	0
Perry	0	25	0	0	0	0
Pickens	0	0	0	27	0	31
Russell	0	0	0	65	0	0
Sumter	0	24	0	55	0	69
Wilcox	0	76	0	142	0	30
Total	0	181	0	598	0	272
CALIFORNIA						
San Francisco	0	0	0	146	140	0
GEORGIA						
Bulloch	0	0	0	0	0	9
Calhoun	0	0	0	0	0	18
Early	0	0	0	0	0	19
Hancock	0	0	0	4	0	0
Johnson	0	0	0	0	0	33
Meriweather	0	15	0	0	0	0
Mitchell	0	0	0	0	0	19
Stewart	0	25	0	0	0	0
Sumter	0	0	0	0	0	26
Telfair	0	0	0	0	0	18
Terrell	11	27	0	0	0	0
Tift	0	0	0	0	0	14
Total	11	67	0	4	0	156
LOUISIANA						
Desoto	5	0	0	0	0	0
East Carroll	38	30	0	0	45	0
East Feliciana	13	3	0	0	0	0
Madison	56	0	0	0	0	0
Plaquemines	0	0	0	0	27	0
St. Helena	4	0	0	0	58	0
St. Landry	0	0	0	0	0	12
Total	116	33	0	0	130	12
MISSISSIPPI						
Benton	29	0	0	0	0	0
Bolivar	55	0	14	5	45	0
Claiborne	76	0	0	0	73	54
Clay	16	16	0	0	0	36
Covington	0	0	0	0	41	0
DeSoto	0	51	2	0	0	0
Greene	0	0	0	0	33	0
Grenada	0	19	0	0	0	0
Hinds	26	0	3	0	0	0
Holmes	34	0	5	0	33	0

Table C.1 (cont.)

Humphreys	67	0	0	0	106	48
Issaquena	2	4	0	0	0	0
Jasper	0	0	0	0	18	0
Jefferson	26	0	0	0	0	0
Kemper	0	0	0	0	55	0
Leflore	162	0	7	0	0	0
Madison	187	0	0	0	0	0
Marshall	217	0	19	0	377	0
Noxubee	126	26	7	0	65	86
Oktibbeha	16	0	0	0	0	0
Quitman	0	0	0	0	0	20
Sharkey	20	0	0	0	0	0
Sunflower	71	0	6	0	0	0
Tallahatchie	6	0	2	0	85	0
Tunica	8	16	24	10	28	0
Warren	42	0	0	0	133	0
Wilkinson	20	0	0	0	26	0
Yazoo	46	0	0	16	94	30
Total	1,252	132	89	31	1,212	274
NEVADA						
Humbolt	0	0	0	3	0	0
SOUTH CAROLINA						
Darlington	0	0	0	55	0	0
Marion	0	0	0	12	0	0
Total	0	0	0	67	0	0
TEXAS						
Atascosa	0	0	0	0	0	19
Bee	0	24	0	0	0	0
Crockett	0	0	0	8	0	0
El Paso	0	0	0	8	0	0
Fort Bend	0	18	0	0	0	0
Frio	0	26	0	0	0	0
LaSalle	0	26	0	0	0	0
Medina	0	57	0	0	0	0
Reeves	0	0	0	74	0	0
Uvalde	0	24	0	0	0	0
Wilson	0	18	0	0	0	0
Total	0	193	0	90	0	19
WISCONSIN						
Shawano	0	0	0	6	0	0

Source: U.S., Department of Justice, Civil Rights Division, Voting Section, Mar. 12, 1981.

TABLE C.2 Counties Designated for Federal Examiners and Number of Persons Listed by Examiners

State and county	Date of designation	Net no. of persons listed
ALABAMA		
Autauga	10–29–65	1,330
Bullock*	11–06–78	
Choctaw*	5–30–66	
Conecuh*	8–28–80	
Dallas	8–09–65	8,418
Elmore	10–29–65	1,792
Greene	10–29–65	1,639
Hale	8–09–65	2,769
Jefferson	1–20–66	20,560
Lowndes	8–09–65	3,030
Marengo	8–09–65	5,076
Montgomery	9–29–65	9,731
Perry	8–18–65	2,035
Pickens*	9–01–78	
Russell*	9–25–78	
Sumter	5–02–66	25
Talladega*	10–31–74	
Wilcox	8–18–65	3,326
Total		59,731
GEORGIA		
Baker*	11–04–68	
Bulloch*	7–30–80	
Burke*	11–07–78	
Calhoun*	7–30–80	
Early*	7–30–80	
Hancock*	11–07–66	
Johnson*	7–30–80	
Lee	3–23–67	475
Meriwether*	8–08–76	
Mitchell*	7–30–80	
Peach*	11–04–72	
Screven	3–23–67	1,448
Stewart*	8–03–76	
Sumter*	7–30–80	
Taliaferro*	11–04–68	
Telfair*	7–30–80	
Terrell	3–23–67	1,465
Tift*	7–30–80	
Twiggs*	9–03–74	
Total		3,388
LOUISIANA		
Bossier	3–23–67	1,182
Caddo	3–23–67	3,084
De Soto	3–23–67	1,843
East Carroll	8–09–65	1,618
East Feliciana	8–09–65	1,222
Madison	8–12–66	528
Ouachita	8–18–65	4,677
Plaquemines	8–09–65	1,768
Sabine*	9–27–74	
St. Helena*	8–16–72	
St. Landry*	12–05–79	
West Feliciana	10–29–65	93
Total		16,015
MISSISSIPPI		
Amite	3–23–67	379
Benton	9–24–65	335
Bolivar*	9–24–65	
Carroll	12–20–65	849
Claiborne	4–12–66	1,154

Table C.2 Counties Designated for Federal Examiners and Number of Persons Listed by Examiners (continued)

State and county	Date of designation	Net no. of persons listed
Clay	9–24–65	1,161
Coahoma	9–24–65	3,545
Covington*	8–06–79	
De Soto	10–29–65	808
Forrest	6–01–67	160
Franklin	3–23–67	47
Greene*	8–06–79	
Grenada	7–20–66	886
Hinds	10–29–65	13,170
Holmes	10–29–65	3,950
Humphreys	9–24–65	1,733
Issaquena	6–01–67	26
Jasper	4–12–66	614
Jefferson	10–29–65	1,756
Jefferson Davis	8–18–65	1,130
Jones	8–18–65	1,906
Kemper*	10–31–74	
Leflore	8–09–65	4,547
Madison	8–09–65	7,070
Marshall	8–05–67	95
Neshoba	10–29–65	743
Newton	12–20–65	639
Noxubee	4–12–66	378
Oktibbeha	3–23–67	324
Pearl River	4–29–74	181
Quitman*	10–29–80	
Rankin	4–12–66	1,061
Sharkey	6–01–67	366
Simpson	12–20–65	1,062
Sunflower*	4–29–67	
Tallahatchie	8–14–71	79
Tunica*	10–31–75	
Walthall	10–29–65	1,075
Warren	12–20–65	1,649
Wilkinson	8–05–67	125
Winston	4–12–66	25
Yazoo*	10–28–71	
Total		53,028
SOUTH CAROLINA		
Clarendon	10–29–65	3,413
Darlington*	11–06–78	
Dorchester	10–29–65	1,169
Marion*	6–26–78	
Total		4,582
TEXAS		
Atascosa*	10–29–80	
Bee*	10–29–76	
Crockett*	8–11–78	
El Paso*	11–06–78	
Fort Bend*	4–28–76	
Frio*	10–29–76	
La Salle*	10–29–76	
Medina*	4–28–76	
Reeves*	5–05–78	
Uvalde*	4–28–76	
Wilson*	4–28–76	

*No examiners were sent to these counties for purposes of listing voters, but they were available on election day to receive complaints of voting rights violations.

Sources: U.S., Department of Justice, Civil Rights Division, Voting Section, "Counties Designated as Examiner Counties" (Mar. 9, 1981); and U.S., Office of Personnel Management, "Cumulative Totals on Voting Rights Examining" (Dec. 31, 1980).

Table D.1 Black Elected County Officials in Southern Counties with 20 Percent or More Black Population, July 1980

State and county	Population	Percent black, 1980	County governing board	Law enforcement officials	Local school board	Other positions
Alabama						
Autauga	32,259	22.4%				
Barbour	24,756	44.4				
Bibb	15,723	23.4				
Bullock	10,596	67.6	3	3	5	1
Butler	21,680	38.4				
Chambers	39,191	35.4				
Choctaw	16,839	43.5	2			
Clarke	27,702	42.7				
Conecuh	15,884	41.4				
Coosa	11,377	34.7				
Crenshaw	14,110	26.2				
Dallas	53,981	54.6				
Elmore	43,390	22.2				
Escambia	38,392	29.6				
Greene	11,021	78.0	5	3	4	2
Hale	15,604	67.8		1		
Henry	15,302	37.9				
Houston	74,632	22.2				
Jefferson	671,197	33.3		8		
Lee	76,283	24.4				
Lowndes	13,253	75.0	2	1	4	4
Macon	26,829	84.0	4	3	4	2
Marengo	25,047	53.3				
Mobile	364,379	31.5		1	2	
Monroe	22,651	43.0		4		
Montgomery	197,038	39.4			1	
Perry	15,012	60.1	2		2	
Pickens	21,481	41.8				
Pike	28,050	35.0				
Randolph	20,075	24.2				
Russell	47,356	39.4				
Sumter	16,908	69.3		9	1	
Talladega	73,826	30.8				
Tallapoosa	38,676	27.0				
Tuscaloosa	137,473	27.2				
Washington	16,821	32.9				
Wilcox	14,755	68.8		6		
Georgia						
Appling	15,565	20.1%				
Atkinson	6,141	22.7				
Baker	3,808	49.8	1		1	
Baldwin	34,686	37.4			1	
Ben Hill	16,000	30.2				
Bibb	151,085	38.5			3	
Bleckley	10,767	22.0				
Brooks	15,255	44.6				
Bryan	10,175	21.5				
Bulloch	35,785	26.7				
Burke	19,349	53.7				
Butts	13,665	39.2				
Calhoun	5,717	57.5			1	1
Camden	13,371	32.1	1		1	
Candler	7,518	32.0				
Charlton	7,343	29.4				
Chatham	202,226	38.2	2		1	

TABLE D.1 Black Elected County Officials in Southern Counties with 20 Percent or More Black Population, July 1980

State and county	Population	Percent black, 1980	County governing board	Law enforcement officials	Local school board	Other positions
Chattahoochee	21,732	32.4	1		1	
Clarke	74,498	23.5				
Clay	3,553	62.1				
Clinch	6,660	29.4			1	
Coffee	26,894	25.4				
Colquitt	35,376	23.4				
Cook	13,490	30.3				
Coweta	39,268	27.2				
Crawford	7,684	39.6				
Crisp	19,489	39.2				
Decatur	25,495	38.9				
DeKalb	483,024	27.1				
Dodge	16,955	26.4				
Dooly	10,826	48.7				
Dougherty	100,978	42.8	2			
Early	13,158	43.2				
Elbert	18,758	30.7				
Emanuel	20,795	31.7				
Evans	8,428	34.7				
Fulton	589,904	51.4	3	2		
Glynn	54,981	26.3	1			
Grady	19,845	31.7				
Greene	11,391	52.6			1	
Hancock	9,466	78.2	2	5	3	3
Harris	15,464	34.2				
Hart	18,585	22.2				
Irwin	8,988	31.0				
Jasper	7,553	40.3				
Jefferson	18,403	54.6				
Jenkins	8,841	41.2				
Johnson	8,660	32.0				
Jones	16,579	30.2			1	
Lamar	12,215	34.5				
Lanier	5,654	24.6				
Laurens	36,990	33.0				
Lee	11,684	23.8				
Liberty	37,583	36.6	1			
Lincoln	6,949	41.6				
Long	4,524	25.7				
Lowndes	67,972	30.3				
McDuffie	18,546	36.2			1	
McIntosh	8,046	45.2				
Macon	14,003	56.1			1	
Marion	5,297	46.2				
Meriwether	21,229	45.0			1	
Miller	7,038	28.5				
Mitchell	21,114	48.0			1	
Monroe	14,610	37.8				
Montgomery	7,011	30.9				
Morgan	11,572	41.0				
Muscogee	170,108	34.0			3	
Newton	34,489	25.5	1		1	
Oglethorpe	8,929	31.7				
Peach	19,151	50.6	1			
Pike	8,937	26.2				
Pulaski	8,950	34.3				
Putnam	10,295	41.5				

TABLE D.1 Black Elected County Officials in Southern Counties with 20 Percent or More Black Population, July 1980

State and county	Population	Percent black, 1980	County governing board	Law enforcement officials	Local school board	Other positions
Quitman	2,357	56.7	1			
Randolph	9,599	56.0				
Richmond	181,629	37.2			2	
Schley	3,433	36.4				
Screven	14,043	45.4				
Seminole	9,057	32.6				
Spalding	47,899	27.1				
Stewart	5,896	62.2			2	
Sumter	29,360	44.2				
Talbot	6,536	64.6	1		1	1
Taliaferro	2,032	64.9				
Tattnall	18,134	29.0				
Taylor	7,902	40.3			1	
Telfair	11,445	30.2				
Terrell	12,017	60.8				
Thomas	38,098	38.4				
Tift	32,862	26.0				
Toombs	22,592	25.4				
Treutlen	6,087	33.3			1	
Troup	50,003	31.3	1			
Turner	9,510	36.8				
Twiggs	9,354	50.8	1			
Upson	25,998	27.5				
Walton	31,211	21.1				
Ware	37,180	22.5				
Warren	6,583	59.6				
Washington	18,842	51.2				
Webster	2,341	50.4				
Wheeler	5,155	29.7				
Wilcox	7,682	31.9				
Wilkes	10,951	45.9				
Wilkinson	10,368	44.9				
Worth	18,064	34.3				
Louisiana						
Allen	21,380	20.4	1		1	
Ascension	50,068	22.5	2		2	
Assumption	22,084	31.7	1		1	
Avoyelles	41,393	25.5				
Bienville	16,387	42.3	1		2	
Caddo	252,294	37.8	6		4	
Calcasieu	167,048	21.7	1		3	
Catahoula	12,287	25.8				
Claiborne	17,085	46.8	2		2	
Concordia	22,981	35.0	2		2	
De Soto	25,664	44.8	4		3	
East Baton Rouge	366,164	31.3		2		
East Carroll	11,772	61.2	5		3	
East Feliciana	19,015	48.6	2		2	
Evangeline	33,343	24.1			1	
Franklin	24,141	32.0			1	
Iberia	63,752	27.7	2		2	
Iberville	32,159	47.9	3		5	
Jackson	17,321	27.2	2		3	
Lafayette	150,017	20.2	2		2	
Lincoln	39,763	36.7	3	1	4	
Madison	14,733	57.9	3	2	5	
Morehouse	34,803	40.2	2	1	2	
Natchitoches	39,863	36.2	3		2	

TABLE D.1 Black Elected County Officials in Southern Counties with 20 Percent or More Black Population, July 1980

State and county	Population	Percent black, 1980	County governing board	Law enforcement officials	Local school board	Other positions
Orleans	557,482	55.3		4	2	
Ouachita	139,241	29.1	1			
Plaquemines	26,049	21.3				
Pointe Coupee	24,045	41.6	2	4	2	
Rapides	135,282	26.8	2		2	
Red River	10,433	34.6	1		3	
Richland	22,187	35.4	2		2	
St. Charles	37,259	25.4				
St. Helena	9,827	51.5				
St. James	21,495	47.2	1	4	2	
St John The Baptist	31,924	38.1	4	2	1	
St. Landry	84,128	38.0	3	3	1	
St. Martin	40,214	32.8	2	2	1	
St. Mary	64,395	28.8	2	5		
Tangipahoa	80,698	30.1				
Tensas	8,525	54.6	3	1	4	
Union	21,167	29.1			1	
Washington	44,207	30.1			1	
Webster	43,631	31.9	2		2	
West Baton Rouge	19,086	38.0				
West Feliciana	12,186	57.9	2	1	4	
Winn	17,253	28.2	2		1	
Mississippi						
Adams	38,035	48.4	1	2		1
Amite	13,369	47.6			1	1
Attala	19,865	39.1				
Benton	8,153	37.9		1	1	
Bolivar	45,965	62.1	1	2	10	
Calhoun	15,664	25.4				
Caroll	9,776	45.3				
Chickasaw	17,853	36.0				
Choctaw	8,996	28.1				
Claiborne	12,279	74.5	4	9	4	8
Clarke	16,945	34.8				
Clay	21,082	49.9	1		1	2
Coahoma	36,918	64.0	1	3	2	1
Copiah	26,503	48.4				
Covington	15,297	34.6				
Forrest	66,018	26.8				
Franklin	8,208	37.2				
Greene	9,827	20.0				
Grenada	21,043	41.8				
Hinds	250,998	45.1	2	5		
Holmes	22,970	71.1	2	5	3	7
Humphreys	13,931	65.6	1	2		1
Issaquena	2,513	55.6	1	3		
Jasper	17,265	49.2				
Jefferson	9,181	82.0	4	10	5	6
Jefferson Davis	13,846	53.6				
Jones	61,912	23.1				
Kemper	10,148	54.3				
Lafayette	31,030	26.4				
Lauderdale	77,285	31.4				
Lawrence	12,518	30.9				
Leake	18,790	34.9			1	
Lee	57,061	20.4				
Leflore	41,525	59.1	1	3	1	
Lincoln	30,174	30.0				

TABLE D.1 Black Elected County Officials in Southern Counties with 20 Percent or More Black Population, July 1980

State and county	Population	Percent black, 1980	County governing board	Law enforcement officials	Local school board	Other positions
Lowndes	57,304	34.2		1		
Madison	41,613	55.9		3	2	
Marion	25,708	29.9			1	
Marshall	29,296	53.2	1	6	2	3
Monroe	36,404	29.7				
Montgomery	13,366	40.9				
Newton	19,944	27.2				
Noxubee	13,212	56.1	1			1
Oktibbeha	36,018	34.3	1		2	
Panola	28,164	48.9				
Perry	9,864	21.7				
Pike	36,173	43.3				
Quitman	12,636	56.0	1	1		
Scott	24,556	35.0		2		
Sharkey	7,964	65.6		2		
Simpson	23,441	30.7				
Smith	15,077	21.2				
Stone	9,716	22.6				
Sunflower	34,844	62.0				
Tallahatchie	17,157	57.2		1		
Tate	20,119	38.4				
Tunica	9,652	73.0		3	1	
Walthall	13,761	41.0				
Warren	51,627	32.4	1	3		
Washington	72,344	55.6		1		
Wayne	19,135	33.5				
Wilkinson	10,021	66.9	2	7	7	3
Winston	19,474	37.8				
Yalobusha	13,139	38.2				
Yazoo	27,349	51.1	1			
North Carolina						
Anson	25,562	46.6			1	
Beaufort	40,266	31.7				
Bertie	21,024	59.2			2	
Bladen	30,448	38.8				
Brunswick*	35,767	23.2			2	
Camden	5,829	32.2	1			
Caswell	20,705	47.1	1			
Chatham*	33,415	26.9	1			
Chowan	12,558	41.5				
Cleveland	83,435	20.8				
Columbus*	51,037	30.2				
Craven	71,043	27.1			1	
Cumberland	247,160	30.6	1			
Duplin*	40,952	34.2				
Durham*	152,785	36.3	2	1		
Edgecombe	55,988	50.8				
Forsyth*	243,683	24.4	1			
Franklin	30,055	40.9				
Gates	8,875	52.5			2	
Granville	33,995	43.4				
Greene	16,117	45.3				
Guilford	317,154	25.0		1		

TABLE D.1 Black Elected County Officials in Southern Counties with 20 Percent or More Black Population, July 1980

State and county	Population	Percent black, 1980	County governing board	Law enforcement officials	Local school board	Other positions
Halifax	55,286	47.1			1	
Harnett	59,570	23.2				
Hertford	23,368	54.8	1		1	
Hoke	20,383	43.5	1		1	
Hyde*	5,873	35.6				
Jones*	9,705	43.4	2		2	
Lee	36,718	22.1				
Lenoir	59,819	38.1			1	
Martin	25,948	44.5				
Mecklenburg*	404,270	26.5		1	3	
Montgomery*	22,469	24.5				
Moore*	50,505	21.2			1	
Nash	67,153	32.9			1	
New Hanover*	103,471	21.6			1	
Northampton	22,584	60.7				
Pamlico*	10,398	31.1				
Pasquotank	28,462	36.5			1	
Pender*	22,215	38.8				
Perquimins	9,486	62.1				
Person	29,164	31.4	1			
Pitt	83,651	34.0				
Richmond*	45,481	26.6	1			
Robeson	101,577	25.2			1	
Rockingham	83,426	20.6				
Sampson*	49,687	33.7		1		
Scotland	32,273	35.2			1	
Tyrrell*	3,975	39.0			1	
Vance	36,748	43.3			1	
Wake*	300,833	21.7	1	2		
Warren*	16,232	59.5	1		2	
Washington	14,801	38.2	1		1	
Wayne	97,054	32.6				
Wilson	63,132	36.4			1	
* Counties not covered by section 4(b).						
South Carolina						
Abbeville	22,627	33.0			1	
Aiken	105,625	24.8				
Allendale	10,700	62.5	2	2	2	
Bamberg	18,118	57.2	1			
Barnwell	19,868	41.4			2	
Beaufort	65,364	32.9	2	1	3	
Berkeley	94,727	24.7	1			
Calhoun	12,206	54.9				
Charleston	277,308	34.3	2	1	2	1
Chester	30,148	38.6				
Chesterfield	38,161	32.6	1		6	
Clarendon	27,464	57.4	1			2
Colleton	31,676	44.4			2	
Darlington	62,717	40.1				
Dillon	31,083	41.9				
Dorchester	58,266	25.5	1	1		
Edgefield	17,528	49.8				
Fairfield	20,700	58.4	2	2		
Florence	110,163	21.9	1		10	
Georgetown	42,461	44.8	1	1	3	
Greenwood	57,847	28.9	2		3	
Hampton	18,159	52.3				

TABLE D.1 Black Elected County Officials in Southern Counties with 20 Percent or More Black Population, July 1980

State and county	Population	Percent black, 1980	County governing board	Law enforcement officials	Local school board	Other positions
Horry	101,419	22.1	1			
Jasper	14,504	57.1	1	2	4	
Kershaw	39,015	31.2				
Lancaster	53,361	24.2				
Laurens	52,214	29.0				
Lee	18,929	61.2	1			
McCormick	7,797	60.6	1		2	
Marion	34,179	52.0	2			
Marlboro	31,634	46.3				
Newberry	31,111	31.6				
Orangeburg	82,276	56.0	3	1		1
Richland	267,827	38.7	1	4	2	
Saluda	16,150	35.3				
Spartanburg	201,553	20.2				
Sumter	88,243	44.1	1		3	
Union	30,751	29.4	1			
Williamsburg	38,226	62.3	2	5		1
York	106,720	22.3	1			
Texas						
Anderson	38,381	21.3	1		1	
Bowie	75,301	21.9			1	
Burleson	12,313	21.9				
Camp	9,275	25.5				
Cass	29,430	22.0			1	
Falls	17,946	27.2	1	1		
Freestone	14,830	21.6			1	
Grimes	13,580	27.8				
Harrison	52,265	31.5				
Houston	22,299	32.3				
Jefferson	250,938	28.2			1	
Limestone	20,224	23.2				
Madison	10,649	24.8				
Marion	10,360	34.7		1		
Morris	14,629	21.8				
Navarro	35,323	20.1				
Newton	13,254	24.1				
Red River	16,101	20.3			1	
Robertson	14,653	32.1			4	
Rusk	41,382	21.7			2	
San Augustine	8,785	29.6			1	
San Jacinto	11,434	21.0		2	2	
Shelby	23,084	21.2				
Smith	128,366	22.0			1	
Trinity	9,450	20.2				
Walker	41,789	24.1			1	
Waller	19,798	42.0	1		2	
Washington	21,998	22.1				
Virginia						
Accomack	31,268	36.5				
Amelia	8,405	38.2	1			
Amherst	29,122	20.5	1			
Appomattox	11,971	23.2				
Brunswick	15,632	57.4	2			
Buckingham	11,751	42.4	1			
Caroline	17,901	43.0	2	1		
Charles City	6,692	70.6	2	2		2
Charlotte	12,266	38.6				
Culpeper	22,620	20.6				

TABLE D.1 Black Elected County Officials in Southern Counties with 20 Percent or More Black Population, July 1980

State and county	Population	Percent black, 1980	County governing board	Law enforcement officials	Local school board	Other positions
Cumberland	7,881	43.6	1			
Dinwiddie	22,602	42.7				
Essex	8,864	40.0	1			
Fluvanna	10,244	29.4	1			
Goochland	11,761	36.3	1			
Greensville	10,903	56.6	1			
Halifax	30,418	39.8				
Henry	57,654	23.4				
Isle of Wight	21,603	41.1	1			
James City	22,763	28.3	1			
King and Queen	5,968	46.3				
King George	10,543	22.6				
King William	9,327	34.9	2			
Lancaster	10,129	33.2				
Louisa	17,825	32.5				
Lunenburg	12,124	39.3				
Mecklenburg	29,414	40.3				
Middlesex	7,719	29.1	1	1		
Nelson	12,204	23.9				
New Kent	8,781	26.0	1			
Northampton	14,625	49.8	1			
Northumberland	9,828	33.6				
Nottoway	14,666	39.0				
Pittsylvania	66,147	30.2				
Powhatan	13,062	25.4				
Prince Edward	16,456	37.5	3			
Prince George	25,733	29.1	1			
Richmond	6,952	31.9				
Southampton	18,731	48.0	1			
Surry	6,046	62.5	3	1		1
Sussex	10,874	61.0	3			
Westmoreland	14,041	38.0	1			

"County governing board" includes commissioners, supervisors, police jurors, etc. "Law enforcement officials" includes sheriffs, judges, constables, etc. "Local school board" includes independent school districts in Texas. School board members are not elected in Virginia. "Other positions" includes election commissioners, tax assessors, etc.

Source: Joint Center for Political Studies, *National Roster of Black Elected Officials*, vol. 10 (1981). Data on Virginia supplied by Virginia State Conference NAACP.

TABLE D.2 Hispanic Elected County Officials in Counties in Texas with 20 Percent or More Hispanic Population, July 1980

County	Total population	Percent Hispanic, 1980	Offices held: County governing board	Law enforcement officials	School board members	Other positions
Atascosa	25,055	47.8%			13	1
Bee	26,033	45.7	1		3	1
Bexar	988,800	46.6	1	1	33	
Brewster	7,573	43.1	3		3	
Brooks	8,428	86.0	4	1	6	4
Caldwell	23,637	33.0			1	
Calhoun	19,574	34.0				
Cameron	209,680	77.1	3	1	43	1
Castro	10,556	38.6			1	
Comal	36,[illegible]6	29.4				
Crockett	4,608	50.4	2			
Crosby	8,859	37.0				
Culberson	3,315	63.4	1		2	
Dawson	16,184	37.7				
Deaf Smith	21,165	40.7			1	
Dimmit	11,367	77.8	3		11	2
Duval	12,517	85.8	2	1	18	4
El Paso	479,899	61.9	2		21	
Frio	13,785	68.4	1		8	2
Goliad	5,193	35.6			1	
Gonzales	16,883	28.8				
Guadalupe	46,708	25.4				
Hays	40,594	30.5	1		1	
Hidalgo	283,229	81.3	3	1	84	3
Hudspeth	2,728	58.2	1		5	
Jeff Davis	1,647	47.2	1		2	
Jim Hogg	5,168	90.5	4	1	3	3
Jim Wells	36,498	92.5	1		15	3
Karnes	13,593	49.9			2	
Kinney	2,279	57.5	2		2	
Kleberg	33,358	52.1	1		13	
La Salle	5,514	73.7	3		1	
Live Oak	9,606	32.0			1	
Lynn	8,605	37.9				
Martin	4,684	34.6			1	
Maverick	31,398	90.3	4		6	3
Medina	23,164	43.4			6	
Nueces	268,215	49.0	1		25	
Pecos	14,618	48.6	1		4	
Presidio	5,188	76.9	3		8	2
Reeves	15,801	62.0	3		2	
Refugio	9,289	38.3			1	1
San Patricio	58,013	46.3	1		14	
Schleicher	2,820	26.0				
Starr	27,266	96.9	4	1	14	4
Sutton	5,130	40.4	1			
Uvalde	22,441	55.2	1		1	
Val Verde	35,910	62.9	2		4	
Victoria	68,807	30.4	1		4	

TABLE D.2 Hispanic Elected County Officials in Counties in Texas with 20 Percent or More Hispanic Population, July 1980 (continued)

County	Total population	Percent Hispanic, 1980	Offices held: County governing board	Law enforcement officials	School board members	Other positions
Webb	99,258	98.5	4	1	18	4
Willacy	17,495	80.3	2		13	2
Wilson	16,756	36.5	1		1	1
Zapata	6,628	76.1	4		7	3
Zavala	11,666	89.0	4	1	7	3
Total			77	9	430	47

"Law enforcement officials" includes county judges only. Data on other Hispanic law enforcement officials are not available.

Source: Southwest Voter Registration Education Project, "Texas Roster of Spanish Surname Elected Officials" (July 1980).

Appendix E
The Voting Rights Act of 1965, as Amended

VOTING RIGHTS ACT OF 1965

Public Law 91-285

PUBLIC LAW 89-110, 89TH CONGRESS, S. 1564,
AUGUST 6, 1965

AN ACT To enforce the fifteenth amendment to the Constitution of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Voting Rights Act of 1965".

TITLE I—VOTING RIGHTS

Public Law 94-73

SEC. 2. No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2).

Public Law 94-73

SEC. 3. (a) Whenever the Attorney General or an aggrieved person institutes a proceeding under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal examiners by the United States Civil Service Commission in accordance with section 6 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the voting guarantees of the fourteenth or fifteenth amendment (1) as part of any interlocutory order if the court determines that

the appointment of such examiners is necessary to enforce such voting guarantees or (2) as part of any final judgment if the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred in such State or subdivision: *Provided*, That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

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(b) If in a proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), it shall suspend the use of tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

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(c) If any proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2): *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days

after such submission, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

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SEC. 4. (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the seventeen years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of seventeen years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2): *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this

paragraph, determining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) through the use of tests or devices have occurred anywhere in the territory of such plaintiff.

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2).

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If the Attorney General determines that he has no reason to believe that any such test or device has been used during the seventeen years preceding the filing of an action under the first sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

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If the Attorney General determines that he has no reason to believe that any such test or device has been used during the ten years preceding the filing of an action under the second sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) he shall consent to the entry of such judgment.

(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous sentence, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968.

On and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous two sentences, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972. Public Law 94-73

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future. Public Law 94-73

(e)(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or

interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

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(f)(1) The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.

(2) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

(3) In addition to the meaning given the term under section 4(c), the term "test or device" shall also mean any practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than five per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority. With respect to section 4(b), the term "test or device", as defined in this subsection, shall be employed only in making the determinations under the third sentence of that subsection.

(4) Whenever any State or political subdivision subject to the prohibitions of the second sentence of section 4(a) provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall

provide them in the language of the applicable language minority group as well as in the English language: *Provided*, That where the language of the applicable minority group is oral or unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

SEC. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the first sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the second sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the third sentence of section 4(b) are in effect shall enact or seek to administer any voting qualifications or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to ob-

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ject, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

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SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b) unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fourteenth or fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fourteenth or fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fourteenth or fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity: *Provided*, That the Commission is authorized, after con-

sulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oaths.

SEC. 7. (a) The examiners for each political subdivision shall, at such places as the Civil Service Commission shall by regulation designate, examine applicants concerning their qualifications for voting. An application to an examiner shall be in such form as the Commission may require and shall contain allegations that the applicant is not otherwise registered to vote.

(b) Any person whom the examiner finds, in accordance with instructions received under section 9(b), to have the qualifications prescribed by State law not inconsistent with the Constitution and laws of the United States shall promptly be placed on a list of eligible voters. A challenge to such listing may be made in accordance with section 9(a) and shall not be the basis for a prosecution under section 12 of this Act. The examiner shall certify and transmit such list, and any supplements as appropriate, at least once a month, to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State, and any such lists and supplements thereto transmitted during the month shall be available for public inspection on the last business day of the month and in any event not later than the forty-fifth day prior to any election. The appropriate State or local election official shall place such names on the official voting list. Any person whose name appears on the examiner's list shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list in accordance with subsection (d): *Provided*, That no person shall be entitled to vote in any election by virtue of this Act unless his name shall have been certified and transmitted on such a list to the offices of the appropriate election officials at least forty-five days prior to such election.

(c) The examiner shall issue to each person whose name appears on such a list a certificate evidencing his eligibility to vote.

(d) A person whose name appears on such a list shall be removed therefrom by an examiner if (1) such person has been successfully challenged in accordance with the procedure prescribed in section 9, or (2) he has been determined by an examiner to have lost his eligibility to vote under State law not inconsistent with the Constitution and the laws of the United States.

SEC. 8. Whenever an examiner is serving under this Act in any political subdivision, the Civil Service Com-

mission may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States, (1) to enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated. Such persons so assigned shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 3(a), to the court.

SEC. 9. (a) Any challenge to a listing on an eligibility list prepared by an examiner shall be heard and determined by a hearing officer appointed by and responsible to the Civil Service Commission and under such rules as the Commission shall by regulation prescribe. Such challenge shall be entertained only if filed at such office within the State as the Civil Service Commission shall by regulation designate, and within ten days after the listing of the challenged person is made available for public inspection, and if supported by (1) the affidavits of at least two persons having personal knowledge of the facts constituting grounds for the challenge, and (2) a certification that a copy of the challenge and affidavits have been served by mail or in person upon the person challenged at his place of residence set out in the application. Such challenge shall be determined within fifteen days after it has been filed. A petition for review of the decision of the hearing officer may be filed in the United States court of appeals for the circuit in which the person challenged resides within fifteen days after service of such decision by mail on the person petitioning for review but no decision or a hearing officer shall be reversed unless clearly erroneous. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court.

(b) The times, places, procedures, and form for application and listing pursuant to this Act and removals from the eligibility lists shall be prescribed by regulations promulgated by the Civil Service Commission and the Commission shall, after consultation with the Attorney General, instruct examiners concerning applicable State law not inconsistent with the Constitution and laws of the United States with respect to (1) the qualifications required for listing, and (2) loss of eligibility to vote.

(c) Upon the request of the applicant or the challenger or on its own motion the Civil Service Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of documen-

tary evidence relating to any matter pending before it under the authority of this section. In case of contumacy or refusal to obey a subpoena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service or process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a hearing officer, there to produce pertinent, relevant, and nonprivileged documentary evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

SEC. 10. (a) The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

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(b) In the exercise of the powers of Congress under section 5 of the fourteenth amendment, section 2 of the fifteenth amendment and section 2 of the twenty-fourth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purposes of this section.

(c) The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

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SEC. 11. (a) No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this Act or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 3(a), 6, 8, 9, 10, or 12(e).

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(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both: *Provided, however*, That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(d) Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

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(e)(1) Whoever votes more than once in an election referred to in paragraph (2) shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2) The prohibition of this subsection applies with respect to any general, special, or primary election held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(3) As used in this subsection, the term "votes more than once" does not include the casting of an additional ballot if all prior ballots of that voter were invalidated, nor does it include the voting in two jurisdictions under section 202 of this Act, to the extent two ballots are not cast for an election to the same candidacy or office.

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SEC. 12. (a) Whoever shall deprive or attempt to deprive any person of any right secured by section 2, 3, 4, 5, 7, or 10 or shall violate section 11(a), shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(b) Whoever, within a year following an election in a political subdivision in which an examiner has been appointed (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot which has been cast in such election, or (2) alters any official record of voting in such election tabulated from a voting machine or otherwise, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

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(c) Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 2, 3, 4, 5, 7, 10, or 11(a) shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2, 3, 4, 5, 7, 10, 11, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under this Act to vote and (2) to count such votes.

(e) Whenever in any political subdivision in which there are examiners appointed pursuant to this Act any persons allege to such an examiner within forty-eight hours after the closing of the polls that notwithstanding (1) their listing under this Act or registration by an appropriate election official and (2) their eligiblity to vote, they have not been permitted to vote in such election, the examiner shall forthwith notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification the Attorney General may forthwith file with the district court an application for an order providing for the marking, casting, and counting of the ballots of such persons and requiring the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine such matters immediately after

the filing of such application. The remedy provided in this subsection shall not preclude any remedy available under State or Federal law.

(f) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of this Act shall have exhausted any administrative or other remedies that may be provided by law.

SEC. 13. Listing procedures shall be terminated in any political subdivision of any State (a) with respect to examiners appointed pursuant to clause (b) of section 6 whenever the Attorney General notifies the Civil Service Commission, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision with respect to which the Director of the Census has determined that more than 50 per centum of the nonwhite persons of voting age residing therein are registered to vote, (1) that all persons listed by an examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) in such subdivision, and (b), with respect to examiners appointed pursuant to section 3(a), upon order of the authorizing court. A political subdivision may petition the Attorney General for the termination of listing procedures under clause (a) of this section, and may petition the Attorney General to request the Director of the Census to take such survey or census as may be appropriate for the making of the determination provided for in this section. The District Court for the District of Columbia shall have jurisdiction to require such survey or census to be made by the Director of the Census and it shall require him to do so if it deems the Attorney General's refusal to request such survey or census to be arbitrary or unreasonable.

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SEC. 14. (a) All cases of criminal contempt arising under the provisions of this Act shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

(b) No court other than the District Court for the District of Columbia or a court of appeals in any proceeding under section 9 shall have jurisdiction to issue any declaratory judgment pursuant to section 4 or section 5 or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto.

(c)(1) The terms "vote" or "voting" shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to,

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registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such a ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

(2) The term "political subdivision" shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

(3) The term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage. Public Law 94-73

(d) In any action for a declaratory judgment brought pursuant to section 4 or section 5 or this Act, subpenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States: *Provided*, That no writ of subpena shall issue for witnesses without the District of Columbia at a greater distance than one hundred miles from the place of holding court without the permission of the District Court for the District of Columbia being first had upon proper application and cause shown.

(e) In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs. Public Law 94-73

SEC. 15. Section 2004 of the Revised Statutes (42 U.S.C. 1971), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637), and amended by section 601 of the Civil Rights Act of 1960 (74 Stat. 90), and as further amended by section 101 of the Civil Rights Act of 1964 (78 Stat. 241), is further amended as follows:

(a) Delete the word "Federal" wherever it appears in subsections (a) and (c);

(b) Repeal subsection (f) and designate the present subsections (g) and (h) as (f) and (g), respectively.

SEC. 16. The Attorney General and the Secretary of Defense, jointly, shall make a full and complete study to determine whether, under the laws or practices of any State or States, there are preconditions to voting, which might tend to result in discrimination against citizens serving in the Armed Forces of the United States seeking to vote. Such officials shall, jointly, make a report to the Congress not later than June 30, 1966, containing the results of such study, together with a list of any States in which such preconditions exist, and shall include in such report such recommendations for legislation as they deem advisable to prevent discrimination in voting

against citizens serving in the Armed Forces of the United States.

SEC. 17. Nothing in this Act shall be construed to deny, impair, or otherwise adversely affect the right to vote of any person registered to vote under the law of any State or political subdivision.

SEC. 18. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEC. 19. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

TITLE II—SUPPLEMENTAL PROVISIONS

APPLICATION OF PROHIBITION TO OTHER STATES

Public Law 94-73
Public Law 91-285

SEC. 201. (a) No citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State.

(b) As used in this section, the term "test or device" means any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

RESIDENCE REQUIREMENTS FOR VOTING

Public Law 91-285

SEC. 202. (a) The Congress hereby finds that the imposition and application of the durational residency requirement as a precondition to voting for the offices of President and Vice President, and the lack of sufficient opportunities for absentee registration and absentee balloting in presidential elections—

(1) denies or abridges the inherent constitutional right of citizens to vote for their President and Vice President;

(2) denies or abridges the inherent constitutional right of citizens to enjoy their free movement across State lines;

(3) denies or abridges the privileges and immunities guaranteed to the citizens of each State under article IV, section 2, clause 1, of the Constitution;

(4) in some instances has the impermissible purpose or effect of denying citizens the right to vote for such officers because of the way they may vote;

(5) has the effect of denying to citizens the equality of civil rights, and due process and equal pro-

tection of the laws that are guaranteed to them under the fourteenth amendment: and

(6) does not bear a reasonable relationship to any compelling State interest in the conduct of presidential elections.

(b) Upon the basis of these findings, Congress declares that in order to secure and protect the above-stated rights of citizens under the Constitution, to enable citizens to better obtain the enjoyment of such rights, and to enforce the guarantees of the fourteenth amendment, it is necessary (1) to completely abolish the durational residency requirement as a precondition to voting for President and Vice President, and (2) to establish nationwide, uniform standards relative to absentee registration and absentee balloting in presidential elections.

(c) No citizen of the United States who is otherwise qualified to vote in any election for President and Vice President shall be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to comply with any durational residency requirement of such State or political subdivision; nor shall any citizen of the United States be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to be physically present in such State or political subdivision at the time of such election, if such citizen shall have complied with the requirements prescribed by the law of such State or political subdivision providing for the casting of absentee ballots in such election.

(d) For the purposes of this section, each State shall provide by law for the registration or other means of qualification of all duly qualified residents of such State who apply, not later than thirty days immediately prior to any presidential election, for registration or qualification to vote for the choice of electors for President and Vice President or for President and Vice President in such election; and each State shall provide by law for the casting of absentee ballots for the choice of electors for President and Vice President, or for President and Vice President, by all duly qualified residents of such State who may be absent from their election district or unit in such State on the day such election is held and who have applied therefor not later than seven days immediately prior to such election and have returned such ballots to the appropriate election official of such State not later than the time of closing of the polls in such State on the day of such election.

(e) If any citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any election for President and Vice President has begun residence in such State or political subdivision

after the thirtieth day next preceding such election and, for that reason, does not satisfy the registration requirements of such State or political subdivision he shall be allowed to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election, (1) in person in the State or political subdivision in which he resided immediately prior to his removal if he had satisfied, as of the date of his change of residence, the requirements to vote in that State or political subdivision, or (2) by absentee ballot in the State or political subdivision in which he resided immediately prior to his removal if he satisfies, but for his nonresident status and the reason for his absence, the requirements for absentee voting in that State or political subdivision.

(f) No citizen of the United States who is otherwise qualified to vote by absentee ballot in any State or political subdivision in any election for President and Vice President shall be denied the right to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election because of any requirement of registration that does not include a provision for absentee registration.

(g) Nothing in this section shall prevent any State or political subdivision from adopting less restrictive voting practices than those that are prescribed herein.

(h) The term "State" as used in this section includes each of the several States and the District of Columbia.

(i) The provisions of section 11(c) shall apply to false registration, and other fraudulent acts and conspiracies, committed under this section.

BILINGUAL ELECTION REQUIREMENTS

Public Law 94-73

SEC. 203. (a) The Congress finds that, through the use of various practices and procedures, citizens of language minorities have been effectivaly excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.

(b) Prior to August 6, 1985, no State or political subdivision shall provide registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language if the Director of the Census determines (i) that more than 5 percent of the citizens of voting age of such State or political subdivi-

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sion are members of a single language minority and (ii) that the illiteracy rate of such persons as a group is higher than the national illiteracy rate: *Provided*, That the prohibitions of this subsection shall not apply in any political subdivision which has less than five percent voting age citizens of each language minority which comprises over five percent of the statewide population of voting age citizens. For purposes of this subsection, illiteracy means the failure to complete the fifth primary grade. The determinations of the Director of the Census under this subsection shall be effective upon publication in the Federal Register and shall not be subject to review in any court.

(c) Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language: *Provided*, That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan natives, if the predominant language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

(d) Any State or political subdivision subject to the prohibition of subsection (b) of this section, which seeks to provide English-only registration or voting materials or information, including ballots, may file an action against the United States in the United States District Court for a declaratory judgment permitting such provision. The court shall grant the requested relief if it determines that the illiteracy rate of the applicable language minority group within the State or political subdivision is equal to or less than the national illiteracy rate.

(e) For purposes of this section, the term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

JUDICIAL RELIEF

SEC. 204. Whenever the Attorney General has reason to believe that a State or political subdivision (a) has enacted or is seeking to administer any test or device as a prerequisite to voting in violation of the prohibition contained in section 201, or (b) undertakes to deny the right to vote in any election in violation of section 202, or 203, he may institute for the United States, or in the name of the United States, an action in a district court of the United States, in accordance with sections 1391 through 1393 of title 28, United States Code, for a restraining order, a preliminary or permanent injunction, or such other order as he deems appropriate. An action under

Public Law 94-73

Public Law 91-285

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this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall be to the Supreme Court.

PENALTY

Public Law 91-285

SEC. 205. Whoever shall deprive or attempt to deprive any person of any right secured by section 201, 202, or 203 of this title shall be fined not more than $5,000, or imprisoned not more than five years, or both.

SEPARABILITY

Public Law 91-285

SEC. 206. If any provision of this Act or the application of any provision thereof to any person or circumstance is judicially determined to be invalid, the remainder of this Act or the application of such provision to other persons or circumstances shall not be affected by such determination.

Public Law 94-73

SEC. 207. (a) Congress hereby directs the Director of the Census forthwith to conduct a survey to compile registration and voting statistics: (i) in every State or political subdivision with respect to which the prohibitions of section 4(a) of the Voting Rights Act of 1965 are in effect, for every statewide general election for Members of the United States House of Representatives after January 1, 1974; and (ii) in every State or political subdivision for any election designated by the United States Commission on Civil Rights. Such surveys shall only include a count of citizens of voting age, race or color, and national origin, and a determination of the extent to which such persons are registered to vote and have voted in the elections surveyed.

(b) In any survey under subsection (a) of this section no person shall be compelled to disclose his race, color, national origin, political party affiliation, or how he voted (or the reasons therefor), nor shall any penalty be imposed for his failure or refusal to make such disclosures. Every person interrogated orally, by written survey or questionnaire, or by any other means with respect to such information shall be fully advised of his right to fail or refuse to furnish such information.

(c) The Director of the Census shall, at the earliest practicable time, report to the Congress the results of every survey conducted pursuant to the provisions of subsection (a) of this section.

(d) The provisions of section 9 and chapter 7 of title 13 of the United States Code shall apply to any survey, collection, or compilation of registration and voting statistics carried out under subsection (a) of this section.

TITLE III—EIGHTEEN-YEAR-OLD VOTING AGE

Public Law 91-73

ENFORCEMENT OF TWENTY-SIXTH AMENDMENT

Public Law 91-73

SEC. 301. (a)(1) The Attorney General is directed to institute, in the name of the United States, such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the twenty-sixth article of amendment to the Constitution of the United States.

(2) The district courts of the United States shall have jurisdiction of proceedings instituted under this title, which shall be heard and determined by a court of three judges in accordance with section 2284 of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

(b) Whoever shall deny or attempt to deny any person of any right secured by the twenty-sixth article of amendment to the Constitution of the United States shall be fined not more than $5,000 or imprisoned not more than five years, or both.

DEFINITION

Public Law 91-73

SEC. 302. As used in this title, the term "State" includes the District of Columbia.

Appendix F
Commission Statute: Defame/Degrade Procedures

STATUTE, RULES, AND REGULATIONS

United States Commission on Civil Rights
Washington, D.C.
April 1980

A. Sections 101–06, Civil Rights Act of 1957, As Amended

[42 U.S.C. 1975-1975e]

Sections 101-06 of the Civil Rights Act of 1957, 71 Stat. 634, as amended by the Civil Rights Act of 1960, 74 Stat. 86, as amended by the Civil Rights Act of 1964, 78 Stat. 241, as amended by 81 Stat. 582 (1967), and as amended by 84 Stat. 1356 (1970); 86 Stat. 813 (1972); 42 U.S.C. 1975 (1976); and by 92 Stat. 1067 (1978)

ESTABLISHMENT OF THE COMMISSION ON CIVIL RIGHTS

Sec. 101 (a) There is created in the executive branch of the Government a Commission on Civil Rights (hereinafter called the "Commission").

(b) The Commission shall be composed of six members who shall be appointed by the President by and with the advice and consent of the Senate. Not more than three of the members shall at any one time be of the same political party.

(c) The President shall designate one of the members of the Commission as Chairman and one as Vice Chairman. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman, or in the event of a vacancy in that office.

(d) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner, and subject to the same limitation with respect to party affiliations as the original appointment was made.

(e) Four members of the Commission shall constitute a quorum.
(42 U.S.C. 1975)

RULES OF PROCEDURE OF THE COMMISSION HEARINGS

Sec. 102. (a) At least thirty days prior to the commencement of any hearing, the Commission shall cause to be published in the *Federal Register* notice of the date on which such hearing is to commence, the place at which it is to be held, and the subject of the hearing. The Chairman, or one designated by him to act as Chairman at a hearing of the Commission, shall announce in an open statement the subject of the hearing.

(b) A copy of the Commission's rules shall be made available to any witness before the Commission, and a witness compelled to appear before the Commission or required to produce written or other matter shall be served with a copy of the Commission's rules at the time of service of the subpena.

(c) Any person compelled to appear in person before the Commission shall be accorded the right to be accompanied and advised by counsel, who shall have the right to subject his client to reasonable examination, and to make objections on the record and to argue briefly the basis for such objections. The Commission shall proceed with reasonable dispatch to conclude any hearing in which it is engaged. Due regard shall be had for the convenience and necessity of witnesses.

(d) The Chairman or Acting Chairman may punish breaches of order and decorum by censure and exclusion from the hearings.

(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony or summary of such evidence or testimony in executive session. The Commission shall afford any person defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by him, before deciding to use such evidence or testimony. In the event the Commission determines to release or use such evidence or testimony in such manner as to reveal publicly the identity of the person defamed, degraded, or incriminated, such evidence or testimony, prior to such public release or use, shall be given at a public session, and the Commission shall afford such person an opportunity to appear as a voluntary witness or to file a sworn statement in his behalf and to submit brief and pertinent sworn statements of others. The Commission shall receive and dispose of requests from such person to subpena additional witnesses. If a report of the Commission tends to defame, degrade, or incriminate any person, then the report shall be delivered to such person thirty days before the report shall be made public in order that such person may make a timely answer to the report. Each person so defamed, degraded, or incriminated in such report may file with the Commission a verified answer to the report not later than twenty days after service of the report upon him. Upon a showing of good cause, the Commission may grant the person an extension of time within which to file such answer. Each answer shall plainly and concisely state the facts and law constituting the person's reply or defense to the charges or allegations contained in the report. Such answer shall be published as an appendix to the report. The right to answer within these time limitations and to have the answer annexed to the Commission report shall be limited only by the Commission's power to except from the answer such matter as it determines has been inserted scandalously, prejudiciously, or unnecessarily.

(f) Except as provided in sections 102 and 105(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

(g) No evidence or testimony or summary of evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without consent of the Commission such evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission shall determine the pertinency of testimony and evidence adduced at its hearings.

(i) Every person who submits data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof,

Appendix G
Defame/Degrade Responses

Defame/Degrade Responses: Chapter 3

AFFIDAVIT OF SARAH HARRIS
REGISTRAR FOR THE CITY OF EMPORIA

As Registrar for the City of Emporia, I share office space with Mrs. Dorothy Kea, Greensville County's Registrar. Our office is located in the Greensville County Circuit Courthouse at 315 South Main Street, Emporia, Virginia. On occasion, I register County voters for Mrs. Kea when she is momentarily out of the office and she reciprocates for me. We also assist one another when there is a great rush of registrants.

Alda White's registration card shows that I registered her. I have tried to recall Miss White's registration, but I do not remember this particular registration among the many that I have done over the years. However, I can assure you that I have never been "nasty" to any applicant, that I have always been congenial towards all persons, and that I have done everything within my power to create a pleasant atmosphere for all applicants. I can only assume that Miss White misinterpreted my application procedure to be hostile, when the approach was in reality business-like. Miss White's complaint regarding my becoming more congenial towards her when I learned she was an attorney and asking about where she worked must have been done because I perceived an uneasiness on her part, and I was probably trying to make her feel more at ease, especially since the difficult aspect of the application had just been completed - the section in which the exact address and location is obtained to determine the correct election district and precinct of the applicant. A question that I may have asked that was not required on the application was merely directed at creating a more pleasant atmosphere and certainly not intended to scare off anyone from registering.

Sarah B. Harris
Sarah Harris

STATE OF VIRGINIA,

LAW OFFICES
VINCENT AND BLOOM
EMPORIA, VIRGINIA

COUNTY OF GREENSVILLE, to-wit:

Subscribed and sworn to before me, Cindy T. Vann, a Notary Public of and for the County and State aforesaid, by Sarah Harris, this 24th day of July, 1981.

My commission expires: 16 September 1981

Cindy T. Vann
Notary Public

AFFIDAVIT OF DOROTHY KEA
REGISTRAR FOR GREENSVILLE COUNTY

As County Registrar, I register Greensville County residents to vote and occasionally Emporia residents. I share an office with the Emporia Registrar, Mrs. Sarah Harris. Mrs. Harris also on occasion registers County applicants when I am not in the office. In looking at Miss White's application, I see that Mrs. Harris prepared her application. Therefore, I know nothing of this particular registration. In any event, I do know Mrs. Harris and in my years of working with her as registrar, I have never heard of her being anything less than courteous and polite to all applicants.

Dorothy Kea

STATE OF VIRGINIA,

COUNTY OF GREENSVILLE, to-wit:

Subscribed and sworn to before me, Cindy T. Vann, a Notary Public of and for the County and State aforesaid, by Dorothy Kea, this 24th day of July, 1981.

My commission expires: 16 September 1981

Cindy T. Vann
Notary Public

ZUCCARO RILEY PINTARD BROWN & CARBY
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
114 SOUTH WALL STREET
NATCHEZ, MISSISSIPPI 39120

JOSEPH S. ZUCCARO
WILLIAM F. RILEY
CLAUDE PINTARD, JR.
WALTER BROWN
PHILIP E. CARBY

POST OFFICE BOX 1047
601-446-6351

July 3, 1981

Mr. Louis Numez
United States Commission on Civil Rights
Washington, D. C. 20425

Dear Mr. Numez:

The enclosed Affidavit has been executed by Mrs. Kathleen W. Cade, incorrectly addressed as Catheline Cade, but to whom you wrote as a former City Clerk of Port Gibson, Mississippi, on June 22, 1981.

Please consider this a response to your letter of June 22, 1981, and we understand that the Affidavit will be published as an appendix to your report.

Please acknowledge receipt of this letter and acknowledge the receipt of the Affidavit at your earliest convenience.

Sincerely yours,

Joseph S. Zuccaro

JSZ:daw

Enclosure

STATE OF MISSISSIPPI

COUNTY OF CLAIBORNE

Personally came and appeared before me, the undersigned authority in and for the County and State aforesaid, KATHLEEN W. CADE, who being first sworn states on oath as follows:

(1)

Affiant served as City Clerk of the Town of Port Gibson, Mississippi from 1944 to 1976.

(2)

Affiant has read certain statements provided to her by the United States Commission on Civil Rights included in a letter from said United States Commission on Civil Rights to Affiant dated June 22, 1981.

(3)

Affiant states that the allegations made by Evan Doss which relate to Affiant are untrue and incorrect and, further, said Evan Doss was not present in the period when Affiant was City Clerk.

(4)

Affiant treated Whites and Blacks alike when persons attempted to register to vote in the office of the City Clerk of Port Gibson, Mississippi. At no time did Affiant intimidate any person relative to attempts for them to register to vote.

(5)

Statements attributed to Evan Doss do not pinpoint the time frame but insofar as they may relate to your Affiant, they are untrue and incorrect.

(6)

Affiant has never heard of James Miller, stated in the last paragraph of the communication as "a community leader" and, therefore, does not respond to any statements made by him.

Kathleen W. Cade

KATHLEEN W. CADE

Sworn to and subscribed before me, this the ~~3rd~~ 1st day of July, 1981.

Evan Ellis McCarley

Notary Public

My Commission Expires:

My Commission Expires Jan. 28, 1985.

Port Gibson, Mississippi

After reviewing appropriate sections of the report relating to Port Gibson, Mississippi, and in light of information provided by Ms. Kathleen Cade, former city clerk and resident of Port Gibson, the Commission responds as follows:

1. Ms. Cade wrote that Mr. Evan Doss was not present in Port Gibson while she served as city clerk from 1944 to 1976, thus asserting that he cannot know about the registration procedures during her appointment. According to the Joint Center for Political Studies' National Roster of Black Elected Officials, 1972-1980, Mr. Doss has been present in Port Gibson serving as the Claiborne County tax assessor since 1972.

2. Ms. Cade also wrote that she has never heard of Mr. James Miller. According to Commission interviews with Mr. Doss and Mr. Miller, Mr. Miller was a mayoral candidate in Port Gibson in 1976.

Mrs. Evelyn Segrest

P. O. Box 209 Port Gibson, MS 39150

July 9, 1981

United States Commission on Civil Rights
Washington, D. C. 20425

Attention: Mr. Louis Nonez Re: your letter 6/22/81

None of the allegations apply to me during the time I served as City Clerk and Registrar for the City of Port Gibson, Mississippi.

Yours truly,

Evelyn Segrest

Evelyn Segrest

CITY OF PORT GIBSON
MISSISSIPPI
Police Dept.

306 FARMER ST.
601-437-5101
601-437-4441

HARVEY J. JONES
CHIEF OF POLICE

JULY 14, 1981

DIRECTOR LOUIS NUNEZ
UNITED STATES COMMISSION CIVIL RIGHTS
WASHINGTON, D.C. 20425

DEAR MR. NUNEZ:

IN REFERENCE TO YOUR LETTER DATED JUNE 22, 1981 CONCERNING THE DATA THAT HAS BEEN COLLECTED IN YOUR STUDY OF THE VOTING RIGHTS ACT OF 1965, I VERY MUCH WOULD LIKE TO REPLY.

I, AS POLICE CHIEF OR AS A PRIVATE CITIZEN HAVE NEVER ON ANY OCCASION BEEN PRESENT AT CITY HALL OR ANY OTHER PLACE WHERE VOTER REGISTRATION WAS BEING CONDUCTED.

THE ALLEGATION THAT I HAVE ATTEMPTED TO INTIMAIDATE ANY PERSON FROM REGISTERING TO VOTE OR VOTING IS TOTALLY FALSE.

SINCERELY,

Harvey Jones

HARVEY JONES

Port Gibson, Mississippi

After reviewing appropriate sections of the report relating to Port Gibson, Mississippi, and in light of information provided by Mr. Harvey Jones, Chief of Police, Port Gibson, Mississippi, the Commission responds as follows:

Mr. Jones wrote that the "allegation" that he intimidates is false. The report does not allege that Mr. Jones directly intimidates persons who come to register. According to individuals interviewed, it is Mr. Jones' presence in the registration office that intimidates blacks.

Georgetown County, South Carolina July 1, 1981

Regarding the above, Mr. Morris Johnson nor any employee or member of the Commission on Civil rights has ever discussed this matter with me. The location of the registration office is a matter for the County Council to determine. All persons Black or white or whatever could register at any High School within the county and in the past at most of the banks in the county and did not have to come to the registration office in person.

Attached is a breakdown of the precincts of the county showing Blacks, whites, oriental and total. You should see by this that there has been no discrimination on my part as I approved most of the applications personally. I think that my civil rights have been abused, but since I have retired, I would prefer not to be bothered by your organization and if any more information is needed, suggest that you contact Mr. D. Z. McKenzie, Chairman of Board of Registration of Georgetown County.

Gordon L. Miller, Jr.

Clerk's Return From

	White	Black	Females	Total
Andrews	735	619		1354
Andrews Outside	285	243		528
Bethel	115	9		124
Black River	405	27		432
Browns Army	98	679		777
Choppee	120	311		431
Cowan Bay	159	30		189
Folly Grove	333	122		455
Georgetown #1	724	363		1087
#2	7	432		439
#3	433	754		1187
#4	555	54		609
#6	99	138		237
#7	1	443		444
Gruers	2	253		255
Kensington	804	0		804
Maryville #5	1164	40		1204
Murrells Inlet	794	214	2	1010
Myersville	1	217		218
Pawleys Island	1346	410		1756
Penny Royal	164	58	1	223
Plantersville	39	336		375
Pleasant Hill	523	244		767
Potato Bed Swamp	74	74		148
Pumpit	310	534		844
Santee	12	527		539
Cedar Creek	248	36		284
Spring Gully	633	282		915
Trout Hall	6	80		86
Wingah Bay	467	98		565
Yauhannah	49	4		53
	10,708	7,628	3	18,339

Georgetown County, South Carolina

After reviewing appropriate sections of the report relating to Georgetown, South Carolina, and in light of information provided by Mr. Gordon L. Miller, Jr., former chairman, Georgetown County Board of Registration, South Carolina, the Commission responds as follows:

In January 1981, the Commission wrote Mr. Miller explaining the Voting Rights Study that it was undertaking, and requesting an interview about registration procedures in Georgetown County. The Commission contacted Mr. Miller by telephone to arrange a possible face-to-face interview, since the events discussed in Georgetown occurred during his appointment. He declined and informed us that he had retired as of December 31, 1980. He recommended that the Commission interview the then acting registrar.

JULY 9, 1981

ROLAND ATTAWAY, SHERIFF
JOHNSON COUNTY COURTHOUSE
WRIGHTSVILLE, GEORGIA 31096

MR. LOUIS NUNEZ
UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D. C. 20425

DEAR MR. NUNEZ:

I ACKNOWLEDGE RECEIPT OF YOUR LETTER OF JUNE 22, 1981, WHEREIN YOU TRANSMITTED A TRANSCRIPT OF ACCUSATIONS MADE AGAINST ME BY E. J. WILSON AND OTHER PERSONS WHO ARE NOT IDENTIFIED.

IN YOUR LETTER YOU SOLICIT MY RESPONSE ON THESE MATTERS REFERRED TO AND I HEREWITH FURNISH SUCH RESPONSE. THE FOLLOWING NUMBERED PARAGRAPHS ARE IN RESPONSE TO SIMILARLY NUMBERED FOOTNOTE REFERENCES CONTAINED IN THE ACCUSATION.

NO. 36 (37) - THIS STATEMENT IS NOT TRUE. I WENT TO THE REGISTRATION OFFICE A VERY LIMITED NUMBER OF TIMES WHILE REGISTRATION WAS TAKING PLACE.

NO. 37 (38) - BLACKS COULD NOT HAVE FELT INTIMIDATED OR AFRAID OF ME BECAUSE DURING NEARLY THE ENTIRE SUMMER OF 1980, THESE BLACKS MARCHED IN THE STREETS OF WRIGHTSVILLE, GEORGIA, IN FRONT OF MY OFFICE IN WRIGHTSVILLE, GEORGIA, CARRYING PLACARDS THAT "ATTAWAY HAS TO GO", "VOTE ATTAWAY OUT OF OFFICE". ON ONE OCCASSION, IN FRONT OF MY OFFICE DOOR, ONE OF THE ACTIVIST CALLED ME A LIAR REPEATEDLY AND IN THE END, A "LYING BASTARD". THE ABOVE LETS ME KNOW THAT THESE PEOPLE WERE NOT AFRAID OF ME IN THE LEAST.

NO. 38 (39) - AS STATED ABOVE, I WAS SELDOM IN THE REGISTRATION OFFICE AND AS STATED ABOVE IF THEY HAD BEEN INTIMIDATED THEY WOULD NOT HAVE BEEN CARRYING PLACARDS AND CURSING ME DURING MOST OF THE SUMMER OF 1980.

NO. 39 (40) - THERE WERE MANY BLACKS THAT REGISTERED TO VOTE DURING THE SUMMER OF 1980 WITHOUT INCIDENT.

PAGE 1

NOS. 40. 41, 42, 43, AND 44 - NONE OF THIS IS TRUE. AS THE SHERIFF OF JOHNSON COUNTY, GEORGIA, I AM SUBJECT TO BE RIDING ON ANY STREET IN THE CITY OF WRIGHTSVILLE, GEORGIA, OR ON ANY ROAD IN THE COUNTY OF JOHNSON.

I WOULD LIKE TO POINT OUT THAT MY PRIVATE OFFICE IS IN THE COURTHOUSE AND JUST A VERY SHORT DISTANCE FROM THE REGISTRATION OFFICE, WHICH IS ALSO LOCATED IN THE COURTHOUSE.

I REQUEST THAT I BE ALLOWED TO GO BEFORE THE UNITED STATES COMMISSION ON CIVIL RIGHTS TO REFUTE THESE CHARGES IN PERSON. I ALSO FEEL THAT SINCE THIS IS GOING TO BE BEFORE THE CONGRESSIONAL COMMITTEE ON VOTING RIGHTS ACT, I HEREWITH REQUEST TO BE ALLOWED TO GO BEFORE THIS CONGRESSONAL COMMITTEE. I FEEL THAT THE COMMITTEE NEEDS TO BE ENLIGHTENED AS TO THE PERCENTAGE OF THE POPULATION THAT IS BLACK, REGISTERED TO VOTE, AND VOTED IN THE 1980 ELECTION AS COMPARED TO THE REGISTRATION AND VOTING OF WHITES IN JOHNSON COUNTY, GEORGIA. I FURTHER FEEL THAT THE COMMITTEE SHOULD BE ENLIGHTENED AS TO THE NUMBER OF BLACK VOTES THAT I RECEIVED IN THE 1980 ELECTION IN JOHNSON COUNTY, GEORGIA.

VERY TRULY YOURS,

Roland Attaway

ROLAND ATTAWAY, SHERIFF
JOHNSON COUNTY, GEORGIA

RA/LW
CC: RONALD (BO) GINN
SAM NUNN
MATT MATTINGLY
STROM THURMOND
BILLY EVANS
GOVERNOR GEORGE BUSBEE

NOTE: The numbers in parenthesis are the current footnote numbers referred to in the verified answer.

VERIFICATION

I, ROLAND ATTAWAY, SHERIFF OF JOHNSON COUNTY, GEORGIA, BEING FIRST DULY SWORN, DEPOSE AND STATE UNDER OATH THAT THE FOREGOING LETTER CONSISTING OF TWO (2) PAGES IS TRUE AND OCRRECT TO THE BEST OF MY KNOWLEDGE.

Roland C. Attaway

ROLAND ATTAWAY

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 9th DAY
OF JULY, 1981.

Carol P. Brewer

NOTARY PUBLIC Notary Public, Laurens County, Georgia
My Commission Expires September 4, 1984

Defame/Degrade Responses: Chapter 4

OFFICE OF COUNTY CLERK

334-2214

PEARSALL, TEXAS 78061

MONA HOYLE
County Clerk

BECKY WARD
Deputy

July 13, 1981

Mr. Michael Goldstein
Office of Program and Policy Review
United States Commission on Civil Rights
Washington, D. C. 20425

Dear Mr. Goldstein,

This is my response to notification as of June 30th, 1981, that Commissioner Adolfo Alvarez and his wife, Lupe Alvarez were solicited by your commission, in December of 1980, in person, and by telephone, in May of 1981, to make complaints and comments to be included in a report entitled The Voting Rights Act: Unfulfilled Goals, to be issued by the U.S. Commission on Civil Rights.

As I understand from our telephone conversation on the 1st day of July, 1981, that the complaints and comments made by the Alvarezes were not sworn statements, and if I do not respond within twenty days with a sworn statement to your commission, their unsworn statements, complaints and comments will be written into your report as true facts. In other words, they were able to say anything they wanted to say without regard to the sworn truth; but I, in response must be sworn in writing or nothing I might say would be considered as the truth. Therefore, my sworn statement would obviously carry more weight than their unsworn statements.

In the first paragraph of the statement of Alolfo Alvarez, your numbers 112-113, "the registrar has been derelict in sending out absentee ballots." "The registrar is not derelic in mailing out absentee ballots of anglos".

All applications received in this office by mail are file-marked with date and hour received by this office. All applications for ballots by mail are porcessed and the ballots mailed to the applicants on the same day the application is received. A day-today posted list for public inspection is kept on all ballots mailed out by this office. This information could have been confirmed by the poll watchers hired by Mr. Alvarez to watch in his behalf. He either did not bother to check with his hired poll-watchers or he has no regard to making his comments truthful.

In paragraph three, your numbers 114-115, Mr. Alvarez statement is in part true. Two ballots mailed to Mexican American voters requesting their ballots be mailed outside the county were sent to their Pearsall mailing addresses, instead of the mailing address outside of the County. This was a clerical error in mailing made by this office. In the November General Election this office processed about five hundred (500) applications for ballots by mail.

continue statement of Mona Hoyle- page 2

I can only conclude from the reading of the statements of Commissioner Alvarez, that because of his obvious ethnic nachisimo attitude toward any woman who might hold any official position customarly held by a man, that any woman would naturally be derelic in her duty only because she is a woman.

I am,

Mona Hoyle

Mona Hoyle
County Clerk, Frio County, Texas
P.O. Box X
Pearsall, Texas 78061

STATE OF TEXAS
COUNTY OF FRIO

Before me, the undersigned authority, on this day personally appeared MONA HOYLE, County Clerk, Frio County, Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes there in expressed.

Given under my hand and seal of office this the 13th day of July, 1981, in Pearsall, Texas.

Notary Public, Frio County, Texas

United States Commission on
Civil Rights
ATTN: Ms. Caroline Davis Gleiter
Assistant Staff Director for
Programs and Policy Review
washington, D.C. 20425

Re: The Voting Rights Act: Unfullfilled Goals

Dear Ms. Gleiter:

I am in receipt of your with respect to referenced matter; receipt was received by me.on June 29, 1981.

My response to Justice of Peace, Precinct No.1 Frank V. Robledo's broad generalization that women election judges have negative attitudes can only be that his reasons for making these statements are due to his ethnic macho attitude toward women who are capable of carrying out jobs as election judges - a position normally held by only men.

This is my response to the notification received from your commission about the complaint filed by Judge Robledo. I understand that this complaint would be included in a report to be issued by your commission entitled, The Voting Rights Act: Unfullfilled Goals. I also understand that this response will be published as an appendix to the report.

Very truly yours,

Mrs. John Stacy
Election Judge
Voting Precinct No.1
Frio County, Texas

THE STATE OF TEXAS
COUNTY OF FRIO

BEFORE ME the undersigned authority in and for the above County, on this day appeared Mrs. John Stacy known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therin expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 7th day of July, 1981.

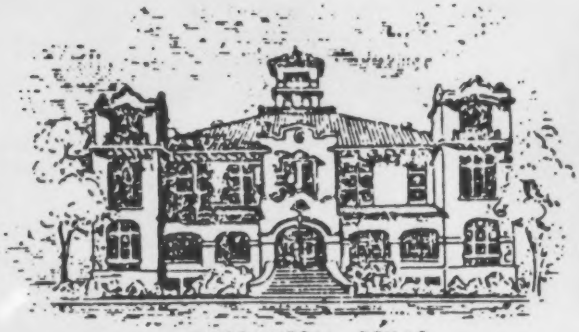
Becky Ward
Deputy County Clerk

Frio County, Texas

After reviewing appropriate sections of this report relating to Frio County, Texas, and in light of information provided by Mrs. John Stacy, the election judge at Precinct 1, the Commission responds as follows:

> In the Commission's report, there were no statements made that referred to <u>women</u> who serve as election judges.

County of ATASCOSA
STATE TEXAS



O. B. GATES
COUNTY JUDGE
Circle Drive No. 41
Jourdanton, Texas 78026

July 10, 1981

United States Commission on Civil Rights
Attention: Louis Nunez
Washington, D. C. 20425

Dear Sir;

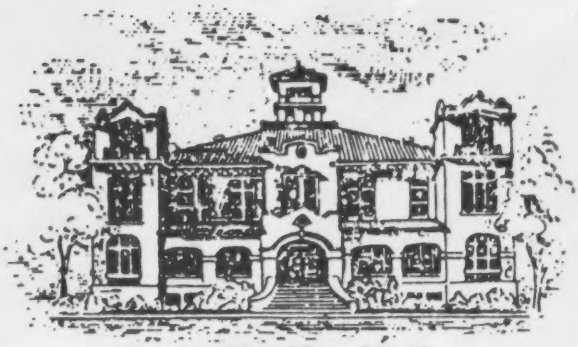
In answer to your first inquiry in letter of June 22, of only two Hispanic poll workers in at least one precinct where "half of the people that come to the polls are Mexican American."

(See attached copy of Article 10B, and also Article 8.13a
Pages 25 & 192 in the 1980-81 edition of Texas Election Laws.)

Precinct 20 was staffed with two people with Hispanic names who ably served the small amount of voters who do not speak English. Ofcourse, as you must realize, just because a person has an Hispanic name, does not mean that they do not speak English. In neither of these articles from Texas Election Laws, does it state what race an interpreter has to be. In South Texas, many people of all races --- not just Hispanics speak Spanish. Precinct 20 was in complete compliance with the law.

In reference to the Precinct Chairmen (election judges) for the primaries and general elections---as required by law Art. 13.18 of Texas Election Laws, the Democratic and Republican Precinct Chairmen (election judges) run for office every two years in their party's primaries. These Primary elections are open to all qualified voters and party members who would like to run. No Hispanics ran for office in 1980.

County of ATASCOSA
STATE TEXAS



JOURDANTON TEXAS

O. B. GATES
COUNTY JUDGE
Circle Drive No. 41
Jourdanton, Texas 78026

The majority of the people who run for election judges are old timers at running elections. They not only run primary and general elections, but also city and school elections. They have worked through the years as judges and so are prepared to run today's elections---a difficult task.

These judges also attend election schools--- on their own time and at their own expense---and then they hire the people (again dedicated workers) who work in their particular precincts.

County Commissioners' Court in turn usually appoint these people who have run for election judge and have attended the schools because they have the experience to run the complicated job of the general election.

If I may be of any assistance to you in the future, please dc not hesitate to call on me.

Very Truly Yours,

O. B. Gates
Atascosa County Judge

obg/jt

cc: Mrs. Judy Wilkerson
Democratic Chairmen
Atascosa County, Texas

tions or forms furnished to the voters shall be printed in English with a Spanish translation on the face of the instrument or furnished separately along with the instrument. All ballots and ballot labels used for absentee voting shall be printed in the manner described in Subdivision 3; and whenever the Spanish translation of ballot propositions is printed separately from the ballot, a copy of the translation shall be furnished to each voter who votes by mail. In the conduct of absentee voting by personal appearance, any other materials enumerated in Subdivision 3 which are used in the voting shall be in bilingual form.

Subdivision 5. Optional use of bilingual materials. In any election held in a county to which Subdivision 1 of this section does not apply, or at any polling place where bilingual materials are not made mandatory under Subdivision 1, the governing body of the political subdivision responsible for the costs of the election may require the use of bilingual ballots and such other items of election materials enumerated in Subdivisions 3 and 4 as the governing body specifies, for any or all of the polling places as specified by the governing body; and the election officers of the political subdivision shall furnish bilingual materials in accordance with the resolution, ordinance, or other document by which their use is required. The governing body may provide for use of the bilingual materials on a continuing basis or on an election-by-election basis, as it sees fit.

Art. 1.08b, Bilingual Clerks.

It is the intent of the Legislature that non-English-speaking citizens, like all other citizens, should be encouraged to vote. Therefore, appropriate efforts should be made to minimize obstacles to voting by citizens who lack sufficient skill in English to vote without assistance.

The presiding judge of a voting precinct in which the election materials provided in Section 8a of this code are required to be used shall make reasonable efforts to appoint election clerks who are fluent in both English and Spanish

NOTE: The 64th Legislature enacted two Articles 1.08b with the above being a part of Senate Bill 1046 and the following Article 1.08b being a part of Senate Bill 1047.

Art. 1.08b. Verification of petition signatures.

Whenever an application or petition of a candidate or a political party for a place on a ballot, or any other instrument authorized or required by this code, contains more than 1,000 signatures or names which need verification, the officer with whom the instrument is filed (including officers of political parties as well as public officers) may employ any reasonable statistical sampling method in determining whether the instrument contains the required

this code, and no other person shall be permitted to be present while the ballot is being prepared. Before assisting the voter, the person selected shall take the following oath, which shall be administered by one of the election officers: "I solemnly swear that I will not suggest, by word or sign or gesture, how the voter shall vote; I will confine my assistance to answering the voter's questions, to stating propositions to be voted on and to naming candidates and the political parties to which they belong; and I will prepare the voter's ballot as the voter directs." The election officer who administers the oath shall cause a notation of the name and address of the person rendering the assistance to be entered on the poll list by the name of the voter who is assisted, together with a notation of the person's kinship to the voter if related as parent, grandparent, spouse, child, brother, or sister.

Subdivision 3. Where any assistance is rendered in preparing a ballot other than as herein allowed, the ballot shall not be counted, but shall be void for all purposes.

Subdivision 4. When an election officer assists a voter, the officer shall read the entire ballot to the voter unless the voter informs the officer that he wishes to vote only in certain specified races. When a voter is to be assisted by someone other than an election officer, the officer who waits on the voter shall ask the voter if he wants the entire ballot read to him, and if the voter says that he does, the officer shall instruct the person who will render the assistance that he must read the entire ballot to the voter.

Art. 8.13a. Use of English language; interpreter.

No election judge or clerk shall use any language other than the English language in performing any duty as such judge or clerk of the election, except that it shall be permissible for him to use some other language when examining, aiding, or giving instructions to a voter who does not understand the English language. Any voter unable to speak or understand the English language may communicate with the election officer in some other language, and if the election officer is unable to speak or understand the language used by the voter or if he requests that the voter communicate through an interpreter, the voter shall be entitled to communicate through an interpreter of his choice, who shall be a qualified voter in the precinct. Before acting as interpreter, the person chosen by the voter shall take the following oath, to be administered by the presiding judge: "I solemnly swear that I will correctly interpret and translate each question, answer, or statement addressed to the voter by any election officer and each question, answer, or statement addressed to any election officer by the voter." When any language other than the English language is used either by the voter or by an election officer, any election officer or any watcher

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shall be entitled to request and receive a translation into the English language of anything spoken in another language.

Art. 8.14. Officers not to electioneer.

No election judge, clerk or other person connected with the holding of an election, shall on election day, indicate by words, sign, symbol or writing to any citizen, how he shall or should not vote; provided, nothing herein shall interfere with the operation of the preceding Article.

Art. 8.15. Deposit of ballot.

Subdivision 1. After the voter has prepared his ballot, he shall fold it so as to conceal the printing thereon and so as to expose the signature of the presiding judge on the back of the ballot (except that ballot cards and certain other types of ballots used in electronic voting systems should not be folded), and then deposit it in the proper ballot box.

Subdivision 2. The ballot stub to be signed by the voter and the stub box for the deposit of the signed stub, formerly provided for in this and other sections of this code, are eliminated by amendments enacted by the 65th Legislature at its regular session in 1977. All statutory provisions relating to the use of ballot stubs and stub boxes which appear in other statutes enacted at the regular session of the 65th Legislature, regardless of whether they are enacted before or after this amendment, or enacted at any prior session, except provisions relating to stubs attached to ballot cards used in an electronic voting system, are to be treated as void.

Art. 8.16. Mutilated ballots.

At any general or primary election no voter shall be entitled to receive a new ballot in lieu of one mutilated and defaced, until he first return such baliot. No one shall be supplied with more than three (3) ballots in succession, when they are mutilated or defaced. A register shall be kept by the clerks as the voting progresses of the mutilated or defaced ballots which shall be deposited in box No. 4.

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Art. 8.17. Bystanders excluded.

From the time of opening the polls until the announcement of the results of the canvass of votes cast and the signing of the official returns, the boxes and official ballots shall be kept at the polling place in the presence of one or more of the judges, and watchers, if any. No person, except those admitted to vote, shall be admitted within the room where the election is being held, except the judges, clerks, persons admitted by the presiding judge to preserve order, inspectors, watchers, and children under 10 years old who accompany a parent who is admitted to vote. Notwithstanding any other provision of this code, the child or children may also be present in the voting booth or compartment while the parent is voting.

Atascosa County, Texas

After reviewing appropriate sections of this report relating to Atascosa County, Texas, and in light of information provided by O. B. Gates, County Judge, the Commission responds as follows:

> Judge Gates wrote that no Hispanics ran for election judges in 1980. His explanation of the election procedures and training requirements may explain why Hispanics did not run for the office. As he explained in his letter, "The majority of the people who run for election judges are old timers" who run primary, general, city and school elections. This appears to leave little opportunity for Hispanics who have not served as election judges in the past to be elected. In addition, he wrote that the election judges attend schools "on their own time and at their own expense." Because of their relatively poor economic status, such requirements may discourage Hispanics from running for election judge.

July 5, 1981

United States Commission of Civil Rights
Washington, D. C. 20425

Sir:

Enclosed is a copy of the letter from the Commission to me regarding an incident in Bexar County, Precinct 356, during the November General Election. There is very little I can add to the facts.

First: the facts as related are essentially correct.

Second: the voter asked that I call the Secretary of State's office. I was glad to do so. I was told that my interpretation was not correct and that a voter with a marked ballot was usually asked to make a sworn statement that he had marked the ballot himself.

Third: I asked the voter to make such a sworn statement and sign it (Sec. 51 Texas Handbook for Election Judges and Clerks) and with no further delay the vote proceeded.

There were several ballots posted on the "pathway" to the poll, so that was not a problem in Precinct 356.

There was no abridgement of the voter's rights: no attempt was made to prevent his voting and he did in fact vote.

Sincerely,

Beverley B. Wallace

Beverley B. Wallace
(Mrs. George M. Wallace)
8622 Bluegrass Ln.
San Antonio, Texas 78239

MARICOPA COUNTY DEPARTMENT OF ELECTIONS

102 County Administration Bldg. 111 S. 3rd Avenue Phoenix, Arizona 85003

DAVID J. NICOI, DIRECTOR

GEORGIA GUEST, ASSISTANT DIRECTOR

7 July 1981

Ms. Caroline Davis Gleiter
Assistant Staff Director
Office of Program and Policy Review
United States Commission on Civil Rights
Washington, D.C. 20425

Dear Ms. Gleiter:

The Commission's communication dated June 22, 1981, was received at this department of Maricopa County Government on June 29, 1981. This letter is our response to the claims in regard to certain procedural matters at the 1980 General Election in this county, such claims being reported in an enclosure to Mr. Nunez' letter of June 22nd.

It is claimed by your sources that some member or members serving on at least one of the 581 Polling Place Election Boards in Maricopa County, Arizona, failed to adequately instruct persons whose names were not found on the Election Register at the precinct polling place as to "what their alternatives were if they were not on the registration list".

I cannot vouch for what did or did not happen at any specific polling place on the day in question, but I can surely inform you as to what actions are taken in this jurisdiction to provide for the alleged situation. Under the provisions of Title 16, Arizona Revised Statutes, membership on the precinct election boards is divided equally between persons nominated by the political party county chairmen of the two political parties casting the most votes at the last preceding general election. Further, Arizona law requires that each election board member so appointed must attend a class of instruction covering election laws, duties of board members and proper conduct of the election. All of these classes for the more than 3,600 election board members were personally presented by the undersigned and utilized both verbal and pictorial (35MM color slides) instructions for emphasis.

I have enclosed a copy of our publication PRECINCT ELECTION BOARD INSTRUCTIONS 1980, a copy of which is furnished to each election board member at the class. You will note a section headlined WHO MAY VOTE which commences at the bottom of page 2. These are clear-cut instructions to the election boards as to the approved manner in which to handle the person whose name is not found on the Election Register. These written instructions are always highlighted during the verbal and pictorial portion of the election board classes.

I trust the information presented in this response and the published instructions to our election board members for the 1980 elections will give the Commission a clear view of our provisions for any such situation as the one alleged by certain claimants. If there are further questions in this matter, we stand ready to assist with any such queries.

Very truly yours,

DAVID J. NICOL
Director of Elections

DJN/ts

ENCL: as stated

cc: Bill Henry, County Recorder (incl. basic correspondence)
Chief, County Attorney Civil Bureau (incl. basic correspondence)

Precinct Election Board

Instructions

1980

MARICOPA COUNTY DEPARTMENT OF ELECTIONS

102 County Administration Bldg. 111 S. 3rd Ave., Phoenix, Ariz. 85003

FORM 21-90 6/80

INTRODUCTION

This booklet is published by the Maricopa County Deparment of Elections for the instruction of precinct election board members who are to serve at elections utilizing the Votomatic punch-card voting system. All board members are urged to study these instructions with great care prior to election day, as well as using this as a handy reference during the hours your election board is in session on election day.

NOTE: ANY CHANGES OR ADDITIONS OR SPECIAL INSTRUCTIONS FOR ANY ELECTION CONDUCTED UNDER THESE REGULATIONS WILL BE ISSUED TO EACH BOARD INSPECTOR.

PRE-ELECTION WEEK

The Inspector should arrange for a meeting to be held at the Polling Place on Monday immediately preceding Election Day with all members appointed to serve on the Precinct Election Board. The Inspector should make arrangements with the custodian of the polling place for the Monday meeting and for Tuesday morning. Contents of the Precinct Supply Box should be checked against the Inventory List. Missing items should be reported to the Elections Department immediately (Tel. 262-1521).

DAY BEFORE ELECTION

Many election boards will have new members who have never served before. For their benefit, the Inspector should discuss in detail the duties of each Board position.

The procedure to be followed Election Day should be fully discussed. The booths, tables and chairs should be arranged as you want them Tuesday morning. Voting booths should be placed near electrical outlets to plug in the lamps on the booth. Remember that the lamps can be connected to one another.

Check the Vote Recorder ballot pages against the Sample Ballot for the name of each candidate and the ballot position number at which he should be located on your Vote Recorders. Insert a Demonstration ballot card in each Vote Recorder and punch each possible voting position. Remove the card and destroy it. Check that the Vote Recorder is securely sealed. Return each Vote Recorder to the box in which it was delivered to you and lock this box. Remember to bring these box keys on Tuesday morning to unlock the Vote Recorder boxes, one of which will serve as your Precinct Ballot Box during Election Day.

Unseal the Ballot Card Issue Box and count the Official Ballot Cards, which are stapled together in stacks of 50 ballot cards each. A Sealing Label on the Ballot Card Issue Box will show the warehouse count of these ballot cards.

Open the front cover of each of the Poll Lists, where you will note that the first two pages comprise an Original and a Duplicate Ballot Report. Insert the back cover flap under the yellow Duplicate Ballot Report in each Poll List and enter on Line 1 of the Ballot Card Account the number of Official Ballots found in the Ballot Card Issue Box.

A list of all persons in your precinct who have applied for an Absentee Ballot will be sent to the Inspector by Special Delivery Mail, except that if you receive mail at a P.O. Box or on a Rural Route we will telephone the list to your home. If this Special Delivery List has not been received by the Inspector by Monday afternoon, please call the Elections Department on 262-1521. At the Monday meeting, write with red pen the word "absentee" in the space provided for the elector's signature on the Signature Roster, which will indicate that this voter has applied for an Absentee Ballot. (A.R.S. 550.C.) **SPECIAL NOTE:** If a voter whose name was reported to the Inspector on the Absentee List states to the Election Board that he **did not request** or **did not receive** or, in any event, **did not** vote

an Absentee Ballot, he will be allowed to vote and his ballot placed in an ABSENTEE APPLICANT QUESTIONED BALLOT ENVELOPE after removing the ballot stub. See instructions for ABSENTEE APPLICANT QUESTIONED BALLOT VOTER. (A.R.S. 579.B.)

Each Election Board Inspector also will be furnished with a list which includes the name of each person who has filed as a WRITE-IN candidate for an office that is being filled by the voters of that election precinct. A.R.S. 16-312.C. requires "The election board inspector shall post the notice of official write-in candidates in a conspicuous location within the polling place." Your supplies will include a large sign headlined "WRITE-IN CANDIDATES" which you are to post prominently above these lists in the polling place. After the polls close, please place this sign in your supply box. Do **not** return the Write-In Lists, as they are no longer of any value to the election system after the polls have closed.

Remind all Board Members to be present at 5:30 A.M. on Tuesday morning.

ELECTION DAY

Before the Polls Open

Members of the Election Board should be at the Polling Place not later than 5:30 A.M. on Tuesday morning. (A.R.S. 16-566)

The Oath of Office on inside cover of Poll Lists shall be administered to the Board and thereafter no election officer will be permitted to leave the Polling Place until the ballots are sealed. Any elector of the precinct may administer and certify the Oath of Office. (A.R.S. 16-534.C.)

Complete the Polling Place Set-Up (A.R.S. 16-563.):

1. Be sure Vote Recorders and booths are properly arranged. Make sure the electrical cord for the lamps is plugged in and the cord is not in the walking area.
2. Post all Sample Ballots and signs provided and display the American Flag.
3. Arrange ballot box, booths and Vote Recorders in full view of the Election Board.
4. Place Signature Roster, Poll Lists and pens on table.

One precinct register should be placed outside the polling place for the convenience of the public. However, if an Extra Clerk has been authorized for your precinct and the Inspector decides that the Board Member on the Signature Roster needs assistance in looking up register numbers, this precinct register may be used for that purpose. The second precinct register is used by the Poll List Clerks to insure proper spelling of the elector's name and register number in the Poll Lists.

The ballot box should be carefully examined by the Board to make certain it is empty. Then it should be locked and opened only after the polls are closed. (A.R.S. 16-564)

POLLS OPEN

The polls are open at 6:00 A.M. The Marshal shall announce that the polls are open exactly at 6:00 A.M. (A.R.S. 16-565)

WHO MAY VOTE

No person shall be allowed to vote in your precinct polling place unless he is qualified in one of the following ways: (1) His name appears on the Precinct Register; (2) He surrenders a County Recorder's Certificate authorizing the addition of his name to the Precinct Register; or (3) He **Qualifies** to vote a Questioned Ballot as detailed in the Questioned Ballot

Voter section of these instructions. When a person's name is not found on your precinct register, direct this person to the 1980 Maricopa County Precinct Map and Election Information Guide to locate the proper precinct of his residence. If he is at the wrong polling place, give him the address of the polling place in his precinct from the list of polling place addresses furnished in your precinct supplies. If he resides in your precinct and **Qualifies** to vote a Questioned Ballot, follow the Questioned Ballot Voter instructions. If a solution is not found in any of these ways, refer this person to the Elections Department, 111 South Third Avenue, Phone: 262-1511. Election Board members are NOT to leave their posts to ascertain where a person is registered; that is the responsibility of the person who wishes to vote.

QUESTIONED BALLOT VOTER

A.R.S. 16-584 states: "A qualified elector not on the precinct register, upon presentation of a voter receipt and upon a determination by the election board that the address of the registrant is within the designated precinct and upon presentation of additional identification verifying the identity of the elector, shall be allowed to vote. The elector's name shall be entered on a separate signature roster page at the end of the signature roster. Voters names shall be numbered consecutively beginning with the number Q-1. The elector shall sign in the space provided. The ballot shall be placed in a separate envelope, the outside of which shall contain the precinct name or number, the signature of the elector, and voter registration number of the elector, if available. The elector receipt card shall be attached to the envelope. Such ballot shall be verified for proper registration of the elector by the County Recorder before being counted. Such verification shall be made by the County Recorder within two days following the election, and the voter receipt card used therefor shall be returned to the elector within a reasonable time thereafter. Verified ballots shall be counted using the procedure outlined for counting absentee ballots. If registration is not verified the ballot shall remain unopened and shall be destroyed."

PROCEDURE:

1. If a person claims the right to vote in this election and his name is not on the precinct register, he MUST present his Voter Receipt (yellow card signed by the Deputy Registrar at time of registration) or Proof of Registration postcard (manila card mailed to voter by Maricopa County Recorder). This document MUST indicate that the voter is registered at an address within the election precinct and the election board MUST establish that the voter registered prior to the close of registration for this election (close of registration for Primary: July 21, 1980, close of registration for General: September 15, 1980). This person MUST present additional identification verifying that he is the person named on the registration document. If the election board is satisfied that these qualifications have been met, this person becomes a Questioned Ballot Voter and the board will proceed as follows:

2. On the Questioned Ballot Voter page of the signature roster, enter the voter's name and other identifying data as shown for regular entries on precinct registers, insofar as possible. Assign a register number to each Questioned Ballot Voter beginning with number Q-1. Have the voter sign in the appropriate space beside his name.

3. On the Questioned Ballot Envelope, complete all entries, have the voter and at least two of the three voting members of the election board sign the appropriate spaces thereon, and seal the Voter Receipt Card (or Proof of Registration card) with information side of card visible in the transparent envelope which is part of the Questioned Ballot Envelope.

4. The Poll List Clerks enter the Questioned Ballot Voter's name on each of their Poll Lists as for other voters, except that entries are in **red ink** and the register numbers are the distinctive "Q-1", "Q-2", etc., series.

5. The completed Questioned Ballot Envelope is given to the Questioned Ballot Voter together with his Notice To Voter slip. He delivers the Notice To Voter slip to the election official issuing ballots, who issues a ballot card and ballot envelope as to other voters. NOTE that the voter retains the Questioned Ballot Envelope while at the voting booth.

6. Upon completion of voting, the Questioned Ballot Voter places the ballot card in the ballot envelope and returns the ballot envelope (containing the ballot card) and also the Questioned Ballot Envelope to the election official at the ballot box. This election official removes the ballot stub, places the ballot envelope and ballot card combination inside the Questioned Ballot Envelope, seals this envelope, and deposits it in the ballot box. The stub is strung as for other electors.

7. After the closing of the polls, the ballot box is opened and all ballots are removed. Questioned Ballot Envelopes are placed UNOPENED in the Ballot Transfer Box and the total number of such ballots is entered on both copies of the Ballot Report. All other ballots found in the ballot box are processed according to instructions found in this booklet.

ABSENTEE APPLICANT QUESTIONED BALLOT VOTER

As noted earlier in these instructions, a voter whose name was reported to the Inspector on the Absentee List may nevertheless be allowed to vote by a special procedure as follows:

PROCEDURE:

1. In the precinct supply box, you will find a quantity of special envelopes called ABSENTEE APPLICANT QUESTIONED BALLOT ENVELOPE. Do not confuse this envelope with the one described above for a voter whose name **did not** appear on the Signature Roster.

2. Complete all entries on the front side of the ABSENTEE APPLICANT QUESTIONED BALLOT ENVELOPE, have the voter place an "X" in the appropriate block to indicate the basis for this special action, and then have the voter sign this form.

3. There will be an entry in red ink on this voter's line of the Signature Roster showing "Absentee". Using a black ink pen, have the voter enter his name directly over the red ink entry in this signature block.

4. Issue a regular Notice To Voter Slip **and** the ABSENTEE APPLICANT QUESTIONED BALLOT ENVELOPE to the voter. He delivers the Notice to Voter Slip to the election official issuing ballots, who issues a ballot card and ballot envelope as to other voters. NOTE that this voter retains the ABSENTEE APPLICANT QUESTIONED BALLOT ENVELOPE while at the voting booth.

5. The Poll List Clerks make standard entries on the Poll Lists for this voter.

6. Upon completion of voting, the Absentee Applicant Questioned Ballot Voter places the ballot card in the ballot envelope and returns the ballot envelope and also the ABSENTEE APPLICANT QUESTIONED BALLOT ENVELOPE to the election official at the ballot box. This election official removes the ballot stub, places the ballot envelope and ballot card combination inside the ABSENTEE APPLICANT QUESTIONED BALLOT ENVELOPE, seals this envelope, and deposits it in the ballot box. The stub is strung as for other electors.

7. After the closing of the polls, the ballot box is opened and all ballots are removed. Both regular QUESTIONED BALLOT ENVELOPES **and** ABSENTEE APPLICANT QUESTIONED BALLOT ENVELOPES ARE PLACED **UNOPENED** in the Ballot Transfer Box. All other ballots found in the ballot box are processed according to instructions found in this booklet.

INSPECTIOR

The Inspector is Chairman of the Election Board and must be consulted regarding procedure. The Inspector shall fill any vacancy which exists at the opening of the polls at 6:00 A.M., or which may occur during the day. In filling vacancies the Inspector shall appoint a qualified elector registered in the same political party as the one being replaced, since the law provides that the election board membership shall be equally divided between members of the two parties casting the highest number of votes in the state at the last general election. The Inspector will assign the work to any Extra Clerks that may be authorized. (A.R.S. 16-531, 16-533, 16-534)

The Inspector shall receive the voted ballots from the voters for the purpose of removing the ballot stub, unless this duty is assigned to another Election Official (Judge) by the Inspector. The Election Official deposits the voted ballot in the ballot box and strings the stub.

JUDGES

The Judges shall perform the following duties, as designated by the Inspector:

1. Issue ballots and initial and record the register number on the stub.
2. Demonstrate the Vote Recorder to voters entering the polling place.
3. Receive the voted ballots from the electors for the purpose of removing the stub, if assigned this duty by the Inspector.

The Judges are in charge of the Vote Recorders. If an elector needs assistance in voting, both the Judges must be present. (A.R.S. 16-513)

No elector should be issued a ballot unless he has the "Notice to Voter" slip, initialed by an Election Official. The slips shall be taken up by the Judge and a ballot then issued. No elector should be issued a ballot until a Vote Recorder becomes unoccupied.

CLERKS

During the voting period, the Clerks are to enter in both Poll Lists the names of ALL electors who vote. Both lists should be identical. Clerks will enter in the Poll Lists the consecutive number plus the name and register number of each elector who votes.

MARSHAL

The Marshal shall post three 50-foot limit notices and mark the 50-foot line in three directions from the entrance to the polling place with the marking powder included with the supplies. The Marshal shall post the sample ballots in convenient places about the polling place for the benefit of voters. He shall announce the opening of the polls at 6:00 A.M. Thereafter he shall be assigned his duties by the Inspector, which shall include preserving order at the polls. The Marshal may assume the necessary duties regarding the Signature Roster and issuance of "Notice to Voter" slips. (A.R.S. 16-535, 16-563, 16-565)

ASSISTANCE TO VOTERS

A voter may be assisted in marking his ballot if he is physically unable to do so himself. When a voter for such reason requests assistance, the two Judges, or a person of the voter's choice, shall accompany him to the Vote Recorder in the voting booth. If the Judges are assisting a voter, they shall distinctly state to the voter the names of the several candidates for each office or the written description of the ballot measure and shall ask the voter how he wishes to vote in each instance. The Judges shall thereupon operate the Vote Recorder in such fashion that the desires of the voter are carried out. Neither of the Judges shall attempt in any way to influence the voter in his choice of candidates or in his vote on any ballot measure. (A.R.S. 16-580.G., 16-513.A.4.)

WHO MAY REMAIN IN THE POLLS DURING VOTING HOURS

NO PERSON shall be allowed to remain inside the FIFTY-FOOT Limit while the polls are open except for the purpose of voting, and except the election officials and one representative and one challenger of each political organization represented on the ballot. (A.R.S. 16-515, 16-590)

APPOINTMENT OF PARTY REPRESENTATIVE

The County Chairman of each political party may, by written appointment addressed to the election board, appoint one Representative to be present in the polling place during voting hours. (A.R.S. 16-515, 16-590)

APPOINTMENT OF CHALLENGERS

The County Chairman of each party may, by written appointment addressed to the election board, designate a party agent and alternates, one of whom may be in the polling place to act as Challenger for his respective party. (A.R.S. 16-515, 16-590)

CHALLENGING VOTERS

The grounds for challenging voters are found in A.R.S. 16-591 and on the front cover of the Challenge List. DO NOT MAKE ANY ENTRIES UNLESS CHALLENGE IS MADE.

See A.R.S. 16-592 for proceedings on challenge and A.R.S. 16-593 for rules determining residence of voter upon challenge. A voter who has moved from the precinct or from one address to another within the precinct after the date of closing of registration for this election is not subject to challenge because of residence. (A.R.S. 16-125, 16-134)

A majority of the election board determines the validity of a challenge and A.R.S. 16-531.A provides that the two Judges together with the Inspector shall constitute the board of election. See also A.R.S. 16-592.

The Oath provided for in A.R.S. 16-592 is printed in the first column of your Challenge List. No other affidavit is necessary.

If a challenge is made, it is suggested that the Inspector should have the person challenged step aside and permit the other voters in line to continue to vote while the challenge is being determined.

ELECTIONEERING AT THE POLLING PLACE

A.R.S. 16-1018 makes it unlawful for any person who "Electioneers on election day within a polling place or in a public manner within one hundred fifty-feet of the main outside entrance of a polling place."

SPOILED BALLOTS

If an elector spoils a ballot card or ballot envelope while voting, he may exchange it for a replacement, except that no more than three ballots may be issued to one elector. The word "SPOILED" shall be written across the face of the ballot card or envelope which was returned for replacement, which shall then be placed in the Official Returns Envelope. (A.R.S. 16-585, 16-513.A.5)

INSPECTION OF VOTING DEVICES

Throughout the day the Inspector shall regularly examine the Vote Recorders, voting stylus, and ballot pages to see if any of these have been tampered with or damaged. If any tampering or damage which cannot be repaired or corrected by the Board is found, the voting device shall be removed from use and reported immediately to the Elections Department, **using the ELECTION HOT LINE number.**

RECEIVING THE BALLOTS

Upon receiving the voted ballot from an elector, the Election Official checks to see that the ballot card is fully inserted in the ballot envelope.

Without removing the ballot card from the ballot envelope, the Election Official folds the numbered ballot card stub several times across the pre-cut perforations and then tears off the stub. In the presence of the voter, the Election Official deposits the ballot envelope containing the ballot card in the ballot box and places the ballot stub on a stub string. (A.R.S. 16-580.E.)

CLOSING THE POLLS

1. The closing of the polls shall be proclaimed one hour and thirty minutes before closing, fifteen minutes before closing, and at the moment of closing, which is 7:00 P.M. Vote everyone who is in line at the moment of closing and allow no one to vote who arrives at the polling place after 7:00 P.M. (A.R.S. 16-565)

2. Open the front cover of **both** Poll Lists and place the back cover flap under the yellow Duplicate copy of the Ballot Report. You are now ready to make the necessary entries on the BALLOT CARD ACCOUNT, the OFFICIAL BALLOT STATEMENT, and the CERTIFICATE OF PERFORMANCE.

NOTE: MAKE NO ENTRIES BELOW THE SCRIBED LINE IMMEDIATELY BENEATH THE CERTIFICATE OF PERFORMANCE !!!

3. Count the number of unused ballot cards and enter that number on line 2 of the BALLOT CARD ACCOUNT section of the Ballot Reports. Replace all unused ballot cards in the Ballot Card Issue Box. Complete the entries on the Official Seal entitled "For Official Ballot Cards Not Issued To Voters", seal the Ballot Card Issue Box with this seal and place in the Precinct Supply Box.

4. Complete the remaining entries on the Ballot Card Account section of the Ballot Reports.

5. Unlock the ballot box and remove all regular ballots and Questioned Ballot Envelopes found therein. Place the Vote Recorders in the empty ballot box, lock, and place the key in the envelope specially marked therefor, which is then placed in the Unofficial Returns Envelope.

6. WITHOUT OPENING ANY OF THESE ENVELOPES, count the total number of QUESTIONED BALLOT ENVELOPES and ABSENTEE APPLICANT QUESTIONED BALLOT ENVELOPES and enter this total on line 1 of the OFFICIAL BALLOT STATEMENT on the Ballot Reports.

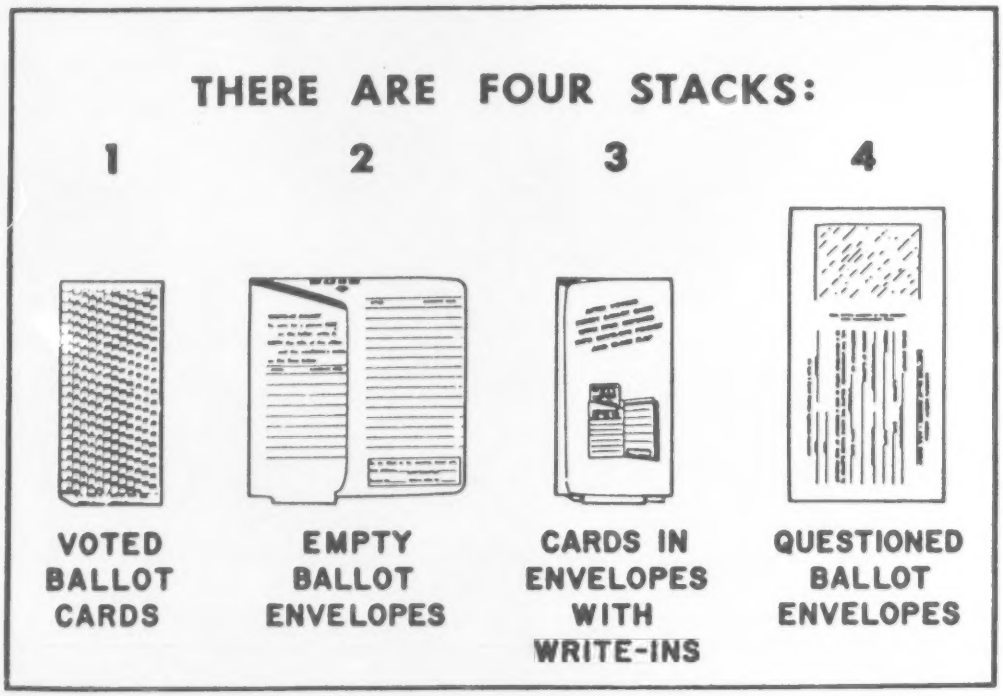
7. Place **all** of the Questioned Ballot Envelopes on Stack #4 (SEE DIAGRAM).

8. Now only regular ballot cards enclosed in ballot envelopes remain. WITHOUT REMOVING THE BALLOT CARDS FROM THEIR ENVELOPES, count them and enter this count on line 2 of the OFFICIAL BALLOT STATEMENT.

9. Open each ballot envelope without removing the ballot card and inspect the ballot envelope for WRITE-IN votes. If any WRITE-IN votes are found on a ballot envelope, close the envelope with ballot card remaining inside and place this ballot envelope on Stack #3 (SEE DIAGRAM).

10. If upon opening the ballot envelope, no write-in votes are found, separate the ballot card from the ballot envelope. Place all cards on Stack #1 and all empty ballot envelopes on Stack #2 (SEE DIAGRAM). When all contents of the ballot box have been placed in designated stacks, place all Stack #2 empty ballot envelopes in the Precinct Supply Box.

NOTE: If a ballot is folded in a manner, or bears upon it any distinguishing impression, device or mark, intended to designate or identify the person who voted the ballot, it shall be rejected. If rejected, write the reason for rejection and enter signatures of a majority of the Election Board on the back of the ballot card or envelope. Place in the Official Returns Envelope. (A.R.S. 16-605, 16-609). Report number of ballots rejected, if any, on line 7 of the Official Ballot Statement.



11. Count Write-In voted ballot envelopes containing ballot cards in Stack #3; enter count on line 3 of OFFICIAL BALLOT STATEMENT.

12. Subtract line 3 from line 2 and enter result on line 4.

13. Add lines 1, 3, and 4 and enter result on line 5.

14. Complete line 6.

15. If lines 5 and 6 of the Official Ballot Statement do not agree, use line 7 to explain the reason for this difference.

16. STOP - - - At this point in the CLOSING THE POLLS procedure, check the BALLOT REPORT entries in each of the Poll Lists to insure that each entry has been completed and that entries are identical in both copies of this report!!!

17. Complete the CERTIFICATE OF PERFORMANCE section on each of the BALLOT REPORT pages of the Poll Lists.

18. REMINDER: Make no entries below the scribed line immediately beneath the Certificate of Performance. This portion of the Ballot Report is for the use of Ballot Processing Boards at Election Central.

19. After insuring that the grey metal BALLOT TRANSFER BOX is empty, place all voted ballot cards from Stack #1 in this box.

20. Place voted Write-In ballot envelopes containing ballot cards from Stack #3 in Ballot Transfer Box. Tighten retaining plate to hold ballots securely.

21. Place Questioned Ballot Envelopes from Stack #4 in Ballot Transfer Box on top of other ballots.

22. Remove the yellow DUPLICATE copy of the Ballot Report page from **each** of the Poll Lists. You now have two of these. Enter the number of the plastic and wire seal for the Ballot Transfer Box on **each** of these reports.

23. Place one of the yellow DUPLICATE copies of the Ballot Report in the Ballot Transfer Box.

24. Seal the Ballot Transfer Box with the numbered seal. Insure that this seal is securely closed.

25. Place the other yellow DUPLICATE copy of the Ballot Report in the Payroll Voucher Envelope.

26. OFFICIAL AND UNOFFICIAL RETURNS ENVELOPES - - - These envelopes are plainly marked as what portions of the returns are to be placed in each envelope. Please read the instructions carefully before closing them. **ONLY** the Official Returns Envelope is sealed.

27. The Official Returns Envelope should be securely sealed with permanent paper seal. The Inspector and Judges must sign their names across the seal and onto the envelope.

28. Place all remaining supplies, including unused ballot cards, in the Supply Box.

29. When each of the steps in the procedure for CLOSING THE POLLS has been completed and double-checked for accuracy, the Election Board Inspector, accompanied by the Election Judge who is a member of the other major political party, IMMEDIATELY delivers the following items to the designated BALLOT RECEIVING STATION:

(1) The sealed BALLOT TRANSFER BOX containing the ballots

(2) The OFFICIAL RETURNS ENVELOPE

(3) The UNOFFICIAL RETURNS ENVELOPE

(4) The PAYROLL VOUCHER ENVELOPE

30. The remaining Election Officials dismantle the voting booths according to instructions labeled on the underside of voting booth tables. Place all voting supplies and equipment in a conspicuous place or as designated by the polling place owner.

PAY SCHEDULE

Rates of pay for Precinct Election Board members will be as follows; Inspector $50.00, Judges, Clerks and Marshals $45.00 and Extra Clerks $40.00. Extra Clerks are assigned **only** by the authority of the Department of Elections. Inspectors will be informed if Extra Clerks have been assigned to any precinct. Each regularly appointed member of a Precinct

Election Board must attend an instruction class preceding election day and will be paid $5.00 for such class attendance. If you drive your personal auto more than 25 miles round-trip to attend an instruction class, you may claim and be paid for this excess mileage. You may claim and be paid for **all** miles driven in your personal auto for the purpose of delivering the Official Election Returns from your polling place to the designated Ballot Receiving Station and return to your residence. Claims for mileage for Official Returns delivery should be entered on the Payroll Voucher. Mileage is payable only to the driver and not to any passengers, no matter what the passenger's election duties may be.

Information on the payroll voucher must be complete in order that the accounting department can accurately compute the exact amount due each person. Each Board Member must sign on the line indicating his assigned position. All claimants must give complete mailing address, including ZIP code. If your polling place is in a public school, please have the custodian sign the payroll voucher and enter his complete mailing address, as we generally make a payment for his support of your official activities.

On the payroll voucher, please enter the time when the last person voted and the total number of persons who voted in your precinct polling place. Show exact time when any board member had to leave his assignment and exact time when any replacement board member commenced his duties.

NO SMOKING PLEASE !!!

No smoking by any person is allowed within the polling place. Please post the NO SMOKING signs and enforce this rule very firmly! Many fine locations for polling places have been refused to us on the basis that there was smoking in connection with voting activities. We know election day is a long and difficult one, but please step outside the building for a smoke when business is slack in your precinct polling place.

TELEPHONE NUMBERS FOR ELECTION ASSISTANCE

For problems concerning the voter registration of persons residing in Maricopa County, please direct all calls to the Elections Department at 262-1511, which connects with a large bank of phones for registration matters ONLY. Other telephone numbers in the Elections Department are not connected with the voter registration files and cannot assist in these matters.

We have established ELECTION HOT LINE telephone lines to insure that there will be uncluttered direct lines for you to use in contacting the Elections Department. These numbers will be furnished to each Inspector prior to election day. Different numbers will be furnished for routine election operations and supply problems (ELECTIONS OPERATIONS CENTER) and for legal assistance problems (DEPUTY COUNTY ATTORNEY), both of these being located within the County Elections Department during election day. These are special lines installed for the exclusive use of Precinct Election Boards and these ELECTION HOT LINE numbers are not to be given to anyone other than Board Members! Our regular published telephone numbers are available to all other persons who are not officially involved in election activities.

Hondo, Texas
June 30, 1981

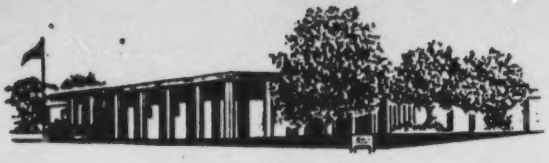
Mr. Louis Nunez
United States Commission on Civil Rights
Washington, D.C.
Dear Mr. Nunez

In respose to your letter of June 22, I would like to say we have never had any problems at our poll which is South-east Hondo. Hondo has four voting precincts for general, primary and special elections. I can just speak for my precinct which treat all voters alike.

I can not speak for city elections or school elections as I have no part in them, only for my precinct in the above named elections. Race, Creed and ethnicity of all voters are treated alike.

We have not had Poll watcher at our poll for several years, the last one being sent by the State of Texas about five or six years ago.

Hoping this will be of some help to you I am
Sincerely,
V. H. Neumann Upney R.t Hondo



CITY OF HONDO
1600 AVENUE M • HONDO, TEXAS 78861

July 13, 1981

Mr. Louis Nunez, Staff Director
United States Commission on Civl Rights
Washington DC 20425

Dear Mr. Nunez:

As City Attorney for the City of Hondo, Texas, I am representing Mr. Henry Stiegler, Election Judge for the City of Hondo municipal election held April 5, 1980. Your letter to Mr. Stiegler indicated that certain allegations had been made against him in his capacity of Election Judge in that election and/or against his clerks. I will answer such allegations in Mr. Stiegler's behalf.

First, Ms. Torres alleged that more Hispanics were challenged at the polls than whites. Mr. Stiegler informs me that more Hispanics than whites came in to vote without their voter registration cards and, when their names were found on the computer printout list of voters, their addresses had changed. In other instances, their names were not on the list at all and they were required to sign affidavits of residency.

As to Ms. Torres' allegation that Hispanic candidates were challenged, Mr. Stiegler has no knowledge or recollection of any candidate's right to vote being challenged.

In answer to the example cited by Ms. Torres of an Angelo being allowed to vote without registration, Mr. Stiegler remembers that the boy was unmarried, his parents were residents of Hondo, he still claimed Hondo as his legal residence and his name was on the list showing him to reside at his parents' address. Mr. Stiegler believes he wrote "Challenge" by the young man's name when his vote was challenged by Ms. Torres.

In regard to Mr. Torres' experience at the polls, Mr. Stiegler explains that Mr. Torres was not challenged, but that the clerk was being very conscientious, double-checking everything and wanted to be certain each voter was registered before allowing him to vote. Mr. Torres was not questioned any more extensively than any other voter coming in without his registration card.

As to Ms. Torres' allegation that some of the Mexican-American voters were not being assisted, Mr. Stiegler assures me that there was a bilingual clerk available to assist anyone requesting assistance (see enclosed affidavit). Mr. Stiegler did explain to Ms. Torres that as a poll watcher, whe was not to approach the voters or assist them in any manner, and was not permitted to talk to the Judge or clerks in regard to the election while the polls were open. Please be aware that Ms. Torres did not reduce her

complaint to writing and deliver a copy to Mr. Stiegler after the election in accordance with Article 3.07 of the Election Code.

Mr. Stiegler wishes me to stress the fact that no one who met the requirements of law was denied the ballot. He has always conducted honest elections and has never permitted nor practiced any form of discrimination against any person for any reason during or in conjunction with an election.

Please direct any further inquiries of Mr. Stiegler to me at the above address. We are happy to cooperate with you in this matter. Thank you.

Sincerely,

Laurie F. Stiteler

(Mrs.) Laurie F. Stiteler
City Attorney

THE STATE OF TEXAS

COUNTY OF MEDINA

HENRY STIEGLER, being duly sworn upon his oath says that he has read the foregoing letter-answer to the report of the United States Civil Rights Commission and that the answers therein are true and correct to the best of his knowledge and belief.

Henry Stiegler

HENRY STIEGLER

Signed and sworn to before me by HENRY STIEGLER on this the 14th day of July, 1981, to certify which witness my hand and seal of office.

Sylvia Timberlake

Notary Public in and for Medina County, Texas.

My commission expires:

April 30, 1985

THE STATE OF TEXAS *

COUNTY OF MEDINA *

Before me, the undersigned authority, on this day personally appeared the undersigned affiant, who, being by me first duly sworn on oath state:

I served as an election clerk in the City Election held April 5, 1980. I am of Mexican American descent and speak Spanish and English fluently. I assisted every voter who requested assistance with any phase of the voting process.

Eva D. Arcos
EVA ARCOS

Sworn to and subscribed before me by the said EVA ARCOS, this the 6th day of July, 1981.

THE STATE OF TEXAS *

COUNTY OF MEDINA *

Before me, the undersigned authority, on this day personally appeared EVA ARCOS, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 6th day of July, 1981.

Brenda Van Damme
Notary Public in and for
Medina County, Texas

BRENDA VAN DAMME
Printed or stamped name of Notary

My commission expires: 11-4-81

15-3752 HART GRAPHICS
Prescribed by Secretary of State
Statutes 3.62, 9.08, and 9.13, Texas Election Code

POLL LIST
(LISTA DE VOTANTES)

Type of Election (Tipo de la Elección)	Precinct No. (Núm. del Precinto Electoral)
City.	1
Date of Election (Fecha de la Elección)	**Authority Conducting Election** (Autoridad Administrando la Elección)
April 5, 1980	City of Hondo, Texas

No. (Núm.)	Name of Voter (Nombre del Votante)	Information on Person Assisting Voter (Información Acerca de la Persona Asistiendo El Votante)		
		Name (Nombre)	Address (Dirección)	Kinship (if any) (Relación)
1	Henry Barron	Eva D'Arcy	1608-16th St.	
2	Felipita Barron	Eva D'Arcy	1608-16	
3	Teodoro Correa	Eva D'Arcy	1608-16	
4	Marcial Ramirez	Eva D'Arcy	1608-16	
5	Martin Dejesus	Eva D'Arcy	1608-16	
6	Minerva Rodriguez	Eva D'Arcy	1608-16	
7	Manuel J. Torres	Eva D'Arcy	1608-16	
8	Margarita A. Sanchez	"		
9	Luis V. Sanchez	"		
10	Pura A. Luevano	"		
11	Andrea Salazar	"		
12	Virginia Sanchez	"		
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NOTE: RETURN THIS COPY IN ENVELOPE NO. 1

Completed Set
No. 1 of ..... Pages

-CD- 55 Rev 1660-81-T.P.

JAMES F. BASS, PRESIDENT
MARTIN RICHARDS, SECRETARY
ROBERT S. BLACK
HECTOR L. DIAZ
FRANK X. GARGIULO
MATTEO LUMETTA
JOSEPH J. PREVITE
ALICE SACHS
ANTHONY SADOWSKI
SALVATORE SCLAFANI

COMMISSIONERS

BOARD OF ELECTIONS
IN
THE CITY OF NEW YORK
GENERAL OFFICE, 131 VARICK STREET
NEW YORK, N. Y. 10013

Derby M. Gaudio, Chief Clerk
Manhattan Borough Office
131 VARICK STREET
NEW YORK, N. Y. 10013
924-1660

Beatrice Berger, Chief Clerk
Bronx Borough Office
1780 GRAND CONCOURSE
BRONX, N. Y. 10457
299-9017

Robert V. Kelly, Chief Clerk
Brooklyn Borough Office
345 ADAMS STREET
BROOKLYN, N. Y. 11201
522-2441

Gloria D'Amico, Chief Clerk
Queens Borough Office
42-16 WEST STREET
LONG ISLAND CITY, N. Y. 11101
392-8989

Rose K. Hyland, Chief Clerk
Staten Island Borough Office
25 HYATT STREET
STATEN ISLAND, N. Y. 10301
727-4300

June 29, 1981

United States Commission on Civil Rights
Washington, D. C. 20425
Att. Louis Nunez

Dear Sir,

In answer to your letter dated June 22, 1981, I wish to appraise you of the following:

(a) As I stated in my letter of September,16, 1980 to Councilman Valentin, that I would try to change the polling place of the 16 ED, 75 AD. It is being changed this year to 364 E. 151 Street and all voters will be notified when the "Mai Check" card is mailed from our IBM dept. in NYC during the Month of Aug st.

(b) You are aware that the Board of Elections does not appoint the Inspectors and Interpreters of Elections. They are assigned by both the Democratic and Republican Clubs. Republican and Democratic County Hdq. will again remind all District Leaders that they must put Spanish speaking Inspectors on their boards where there is more than a 5% spanish speaking voting population.

Trusting the above answers your inquiries and if at any time we can be of further help, please notify.

Very truly yours,

Dorothy Dugan

Chief Clerk- Bronx Boro Office

BB:ad

BETTY DOLEN
EXECUTIVE DIRECTOR
ALFRED S. PANTALEONE
DEPUTY EXECUTIVE DIRECTOR

KATHERINE L. PETROCELLI
JAMES R. McMANUS
SENIOR ADMINISTRATORS

Defame/Degrade Responses: Chapter 5

City of Hopewell
Virginia

23860
CITY COUNCIL

15 July 1981

Louis Nunez, Staff Director
United States Commission on Civil Rights
Washington, D. C. 20425

Dear Mr. Nunez:

In response to information received as part of your report entitled The Voting Rights Act: Unfulfilled Goals, the City of Hopewell objects to the inclusion of unverified and incorrect statements as facts or data in your report.

In particular, the City of Hopewell objects to the conclusion that "Under this election system, blacks have been reluctant to run, and Rev. Harris has been the only exception." We have often wondered why blacks have been reluctant to run when in fact some blacks have been encouraged to do so by whites. The City also takes exception to the statement that "After considerable efforts by the Hopewell Action Council, the Virginia Southern Christian Leadership Conference, and the Virginia American Civil Liberties Union, the city council voted on January 13, 1981 to put the current at-large election system to a citywide referendum to determine if the voters prefer single-member districts." The fact of the matter is that a petition was presented to City Council and, with no debate, City Council agreed and voted to put the matter to a Citywide referendum on November 3, 1981. No complaints have been received from blacks or anyone else about the location of the voting places.

As indicated in your report, by design only one black has ever run for the City Council. The only conclusion that can rightfully be drawn from his failure to be elected is that he as an individual is not electable. The report fails to state that the same individual has run for other districtwide offices and has failed to obtain the support of the black voters.

Very truly yours,

Thomas R. Blount

Thomas R. Blount
Mayor

TRB;CRP:bt

Hopewell, Virginia

After reviewing appropriate sections of this report relating to Hopewell, Virginia, and in light of information provided by Thomas R. Blount, Mayor of Hopewell, the Commission responds as follows:

(1) All election data concerning Hopewell, Virginia in the text of this report are based on official election returns. Further research based on election data provided by the Virginia State Board of Elections found that Rev. Curtis Harris had run for two "districtwide" offices and did obtain significant support from black voters. In the November 5, 1974 Congressional race in the 4th District, Harris ran as an independent candidate against one Democratic and one Republican opponent. Harris outpolled his two opponents in one predominantly black precinct and finished second in Hopewell's other precinct with significant numbers of black voters. Harris received over 17,000 votes districtwide and figured prominently in the defeat of the Democratic candidate in a heavily Democratic district. According to The Almanac of American Politics, 1976 (p. 879) Harris "...cut heavily into what would have been Schlitz's /the Democratic candidate/ vote in the southside counties and the Petersberg area..." In the June 8, 1976 Democratic congressional primary, Harris ran against one opponent. According to returns provided by the Virginia State Board of Elections, Harris carried the entire city of Hopewell over his one opponent.

(2) The Commission notes that the use of the words "after considerable efforts" does not refer to the actions or deliberations of the Hopewell City Council but to the activities of the named organizations who first petitioned the Circuit Court of the City of Hopewell and then were directed by the court to the city council for appropriate action.

ROSE, JONES, RAND & ORCUTT, P. A.
ATTORNEYS AT LAW
FIRST UNION NATIONAL BANK BUILDING
P. O. DRAWER 2008
WILSON, NORTH CAROLINA 27893

Z. HARDY ROSE
BOBBY F. JONES
WILLIAM R. RAND
DAVID S. ORCUTT
REBECCA W. GILES

WILLIAM A. LUCAS (1881-1967)
OLIVER C. RAND (1895-1967)

TELEPHONE 291-3848
AREA CODE 919

July 23, 1981

Mr. Michael Goldstein
U. S. Commission on Civil Rights
Washington, D. C. 20425

Dear Mr. Goldstein:

By letter dated June 22, 1981, the City of Wilson was served with a letter and other material from your office relating to the report on the Voting Rights Act of 1965, which report is being prepared by your office. By letter of Caroline Davis Gleiter dated July 7, 1981, the City of Wilson was granted an extension for receipt of the verified answer until July 27, 1981. We are enclosing that answer.

I call your attention to the fact that one of our city councilmen, A. P. Coleman, was out of town during the week and in view of the fact that your office placed a deadline on us, we were unable to obtain his signature. However, we do have the signatures of all other members of council and the mayor himself. Mr. Coleman will be in the office on July 27, 1981, and at that time he will review the response and we will advise you as to whether or not he agrees with the response or disagrees with the response. I call your attention to the fact that it has been signed by the Mayor of the City of Wilson, and has been adopted by five out of the six individual councilmen for the City of Wilson.

If you have any questions, please let us know.

Sincerely,

ROSE, JONES, RAND & ORCUTT, P. A.

By _____
Bobby F. Jones

BFJ:mm

Enclosure

NOTE: Other materials submitted with this verified answer are on file at the Commission

RESPONSE OF MAYOR AND CITY COUNCIL OF THE CITY OF WILSON
TO REPORT OF U. S. COMMISSION ON CIVIL RIGHTS

Now comes the Mayor and City Council of the City of Wilson responding to certain items contained in a proposed Report by U. S. Commission on Civil Rights to Congress and allege and say:

1. Responding to Item 118 and 119, the Council believes them to be true.

2. Item 120 is factually true, however, Council does not know whether this is a result of lack of interest on the part of qualified candidates or whether it was for some other reason. Further, there were no black candidates running in 1969 and 1971.

3. In responding to Items 121 through 125, Council can only speculate as to why Mr. Butterfield lost and can only speculate as to why Mr. Coleman won. The success that Mr. Coleman has had as a candidate would be evidence that a black person can be elected to the City Council for the City of Wilson. In response to Item 124, another black did outpoll A. P. Coleman in three of the four majority black districts but the votes in three of the four districts were so close as to be insignificant. Further, the third black received significantly fewer votes than the candidate ultimately elected to City Council in three of the four majority black precincts.

4. In response to Item 126 through 129, we respond as follows:

a. Affidavits of Councilmen Bullock, Burriss, Parker, Rice and Walston verify that neither of these individuals felt that race was a factor in the selection of Mayor Pro Tem.

b. Affidavit of Councilman Coleman, attached hereto, confirms that he felt that race was a factor.

c. A copy of the election results attached hereto and a copy of the minutes showing the selection of the Mayor Pro Tem reveal that there has been only two Mayor Pro Tems in the City of Wilson since 1965 and that longevity and experience have historically been the criteria used in determining the

Mayor Pro Tem. Attention is called to the fact that the Mayor Pro Tem in 1967 and 1971 received the fifth largest number of votes and in 1973 received the sixth largest number of votes. That the Council selected the Mayor in 1973 and the Mayor received the fourth largest number of votes and in 1975 the Mayor selected by Council received the third largest number of votes. Edgar Norris served as Mayor Pro Tem for 8 years and during that period of time he tied a high vote getter once, and in the other four elections, he was not the high vote getter. The statement contained in Item 134 through 137 saying that all previous top vote getters had been made Mayor Pro Tem is inaccurate. (126 through 129)

d. Affidavits of Councilmen Bullock, Rice and Parker confirm that there was discussion of Martha Walston being selected Mayor Pro Tem before the votes were actually counted.

5. Responding to statement 138, it is obvious that it is necessary (130) for any candidate, whether white or black, to have organizational resources and the support of both the black and white community in order to get elected. The registration books reveal that approximately one-third of the registered voters within the City of Wilson are black and two-thirds are white. The voters statistics reveal that black individuals receive votes in the white community and white individuals receive votes in the black community. There is a political philosophical difference between the "at-large system" and "ward system" of electing councilmen that has been debated through the years. In communities the size of Wilson, it appears that the majority of the communities prefer the at-large system.

6. All of the members of Council deny Item 139. (131)

7. Council does not know how to respond to Item 140 in that Council (132) has not seen any significant demand from any area of the community to support a change in the system for selecting councilmen. The adoption of a ward system as recommended by the Report would not necessarily guarantee greater participation by blacks in City government, and could result in a City Council less responsive to the needs of the black community. Under the current at-large system, in order to be elected to City Council, candidates must campaign city wide and must receive

support from all segments of the community, both black and white. In order to insure reelection, all council members must be responsive to the needs of the entire city. Under the ward system, blacks would obtain a majority in approximately one-third of the wards. However, representatives from the predominantly white districts would have majority control of the council. These elected officials could be elected and reelected without the necessity of obtaining or having any support from the black community so long as they represent the interests of their home districts. Neither system of elections is without certain inherent flaws and difficulties. The selection of one method over another is primarily a philosophical issue which should be resolved by the people in the community. The Council specifically denies that blacks do not have a representative on City Council. Each member of Council believes that he or she represent a philosophy of good sound government for all the people and use this as the guiding star in casting their votes.

8. In 1970, the City Council annexed 2100 acres of land which had a predominantly black population. In annexing the area, it was obvious that City Council intended to provide utility services that had not heretofore been available to the area with the result of significantly increasing the number of black residents and voters in the City of Wilson. This was a positive step as far as increasing the number of black voters.

9. The City Council has been under the 1965 Voters Registration Act since its inception and as far as Council knows, the City Council has not violated any of the provisions of the Act. The Wilson County Board of Elections controls all elections within the County including that of City officials and as a result thereof, the City Council has no control over the administration of the voting.

This response duly adopted by each individual member of City Council and by the Mayor of the City of Wilson on the 22 day of July, 1981.

NORTH CAROLINA

WILSON COUNTY

I, Ralph El Ramey, Mayor of the City of Wilson, and L. P. "Bogie" Bullock, C. C. Burriss, ~~A. P. Coleman~~, James Parker, George Rice and Martha K. Walston, Members of City Council of the City of Wilson, first being duly sworn, depose and say:

That we have read the foregoing Response and that the matters and things alleged therein are true to the best of our own knowledge except as to those matters and things alleged therein upon information and belief and as to those, we believe them to be true.

This the 22nd day of July, 1981.

Ralph El Ramey

L. P. "Bogie" Bullock

C. C. Burriss

A. P. Coleman

James Parker

George Rice

Martha K. Walston

Sworn to and subscribed before me
this 22nd day of July, 1981.

Notary Public

My Commission Expires:
Jan. 30, 1986

Councilman A. P. Coleman was out of town during the week that this response needed to be filed and was not available for signature. He will be in town the week of July 27 and at that time will review the response and you will be advised as to whether or not he adopts the response in its entirety. His individual affidavit is enclosed and made a part of this response with his permission.

NOTE: The numbers in parenthesis are the current footnote numbers referred to in the verified answer.

I, A. P. COLEMAN, a member of the City Council of the City of Wilson, have read the Response of the Mayor and City Council of the City of Wilson to the Report of U.S. Commission on Civil Rights and adopt the same as my response with the exception of paragraph 4 in that Response. In regard to the matters and things contained in paragraph 4, I refer you to my affidavit that was filed with the Response and reaffirm those things set forth in that affidavit.

This will further verify that I was out of town at the time the Response was signed by other Councilmen and mailed to the U. S. Civil Rights Commission.

This the 27th day of July, 1981.

A. P. Coleman

A. P. Coleman

Sworn to and subscribed before me

this 27th day of July 1981.

Betty S. Mullen

Notary Public

My Commission Expires:

August 14, 1984

297

NORTH CAROLINA

WILSON COUNTY

I, L. P. (BOGIE) BULLOCK, being first duly sworn, depose and say:

That on November 6, 1979, I was elected to the Wilson City Council for the first time.

That immediately after the election, I discovered that Martha Walston had, prior to voting, contacted some of the other candidates in an effort to have them select her as Mayor Pro Tem. After some investigating, I discovered that she had already lined up enough votes to be selected Mayor Pro Tem and there was no need for anyone else to seek the job.

It appears to the undersigned that Mrs. Walston was seeking the position of Mayor Pro Tem prior to the general election and without knowing who might be the top vote getter.

In my opinion Martha Walston was elected Mayor Pro Tem without regard to any racial factors of any kind.

This the 22nd day of July, 1981.

L P "Bogie" Bullock (SEAL)
L. P. (Bogie) Bullock

Sworn to and subscribed before me
this 22nd day of July, 1981.

Margie N. Harris
Notary Public

My Commission Expires:
Jan. 30, 1986

STATE OF NORTH CAROLINA

COUNTY OF WILSON

I, C. C. BURRISS, being first duly sworn, depose and say:

The qualified voters of the entire City of Wilson, N. C. elect the members of the City Council pursuant to Article III, Section 3.2 of the Charter of the City of Wilson. The Council thus elected by the qualified voters elect the Mayor Pro Tem from its membership at its first official meeting following the swearing in ceremonies.

At the regular meeting of the Wilson City Council on December 13, 1979, at the call of Mayor El Ramey for nominations for Mayor Pro Tem, I placed the name of Martha K. Walston in nomination for Mayor Pro Tem. Mrs. Walston, being the only female on Council and having served with excellency during the immediate prior term as Mayor Pro Tem, it was my opinion that she should continue to serve as Mayor Pro Tem this term. There was absolutely no attention, consideration, heed, or thought of racial discrimination in my placing her name in nomination. I was only motivated by her experience and worth of service to our citizens in continuing as Mayor Pro Tem.

My nomination of Mrs. Walston was seconded by Councilman Jim Parker. The minutes of the meeting reflect that Mrs. Walston was "unanimously elected Mayor Pro Tem of the City of Wilson".

This the 22nd day of July, 1981.

C. C. Burriss (SEAL)

Sworn to and subscribed before me
this 22nd day of July, 1981.

Margie N. Harris
Notary Public

My Commission Expires:
Jan. 30 1986

NORTH CAROLINA

WILSON COUNTY

I, JAMES PARKER, being first duly sworn, depose and say:

Two years ago, during the election of City Council, Martha Walston, the current Mayor Pro Tem, approached me and asked for my support for her as Mayor Pro Tem. I should point out there was competition for the office of Mayor but there was none for the six seats on Council. In my opinion, the number of votes received by those running for Council meant nothing to me because we had no competition.

The election of 1977, Martha Walston received more votes running for a Council seal than Red Benton (unopposed) received running for Mayor. This illustrates to me that if there is no opposition for a given seat, people do not bother to vote.

After the election of 1975, Red Benton (7th) and Charles Leonard (2nd) were vying for the office of Mayor. At that time, the Mayor was elected among Council members not by the vote of the people. Martha K. Walston finished first in the balloting but was not considered by Council for the office of Mayor.

During our preceding term, Martha Walston did an outstanding job as Mayor Pro Tem. She had served in this position for four years serving the City of Wilson very well. She spoke to civic groups, travelled on behalf of the City and attended the ribbon cuttings. She requested my support before the election of 1979 and I was more than happy to give her my support.

Personally, Martha and I are now senior members of Council (3 terms). I could have argued, based on seniority, that I should have been considered for the job but I did not.

Red Benton never finished first in the vote for Council over the years but he was elected Mayor among Council members.

This the 22 day of July, 1981.

James Parker

Sworn to and subscribed before me

this 22nd day of July, 1981.

Notary Public

My Commission Expires:

Jan. 30, 1986

NORTH CAROLINA

WILSON COUNTY

AFFIDAVIT

GEORGE RICE, first being duly sworn, deposes and says:

That when he was first elected to the City Council of the City of Wilson in 1977, the Mayor, Red Benton, requested that he support the election of Councilwoman Martha Walston as Mayor Pro Tem since she had served in that capacity during the preceding term and had done an excellent job. Consequently, he supported Councilwoman Walston for Mayor Pro Tem in 1977.

Prior to any ballots being cast in the 1979 election, Councilwoman Walston asked him if he would be willing to elect her as Mayor Pro Tem.

He thought she had done an excellent job as Mayor Pro Tem during the previous term, and out of respect for the job she had done, he agreed to vote for her as Mayor Pro Tem.

That he gave no thought to who was the high vote getter or low vote getter, nor did he base his opinion in any way on racial factors. His sole consideration in electing Councilwoman Walston as Mayor Pro Tem was her prior experience and the respect he had for the job she had done as Mayor Pro Tem.

This 2nd day of July, 1981.

George Rice

Sworn to and subscribed before me,

this 2nd day of July, 1981.

Notary Public

My commission expires:

Jan. 30, 1986

STATE OF NORTH CAROLINA

COUNTY OF WILSON

I, MARTHA K. WALSTON, being first duly sworn, depose and say:

When I was first elected to the City Council in November of 1975, I was the top vote getter in that election. At that time, the Mayor was elected by vote of the Council and there was some discussion about electing me as the Mayor. I requested that I not be considered for the position as Mayor because I did not feel qualified for the position having been newly elected to City Council. I was then asked to serve as Mayor Pro Tem and I agreed to so serve. I have continued to serve in that capacity after each subsequent election.

Since I had served as Mayor Pro Tem for the preceding two terms, in 1979 I determined that I would like to serve again in that capacity. Prior to the election in November of 1979, I expressed my interest in continuing to serve as Mayor Pro Tem to a number of individuals who were running for City Council, and they indicated that they would be willing to support me as Mayor Pro Tem. After the election, I was unanimously elected as Mayor Pro Tem.

At no time has race been a factor in any voting decision that I have made as a City Councilman except as Chairman of the Nominating Committee. As Chairman of the Nominating Committee, I have made every effort to see that blacks were represented on every City Board, and I have actively recruited blacks to serve on City boards and commissions.

This the 22 day of July, 1981.

Martha K. Walston (SEAL)
Martha K. Walston

Sworn to and subscribed before me
this 22nd day of July, 1981.

Margery N. Davis
Notary Public

My Commission Expires:
Jan 30 1986

United States Commission on Civil Rights
Washington, D. C.

In response to Questions or Comments dated June 22, 1981, to Wilson City Council, the undersigned, A. P. Coleman, first being duly sworn, deposes and says:

This writer would have no comments to statements 126 or 127.

In response to item 128, after having been approached by an intergrated group of interested citizens, this respondent decided to accept the group's support. Frankly, I felt honored and surprised having been approached to seek such a position in the community. I also felt that this was an excellent opportunity to secure some minority representation in City government, specifically on City Council.

This respondent would have no comments to numbers 129 thru 133.

In response to item number 134, I feel A. P. Coleman finished first in the election because he campaigned. He wanted to guard against a strong write-in vote. Further, he had successfully served the citizens for one term, he also was active in the community and was known throughout Wilson City and County. In addition to the above, he campaigned to represent all the citizens because it was an at-large election. He had demonstrated this philosophy during the pervious term in office.

In response to item 135, I stated that the top vote getter had been elected Mayor protem since during the time of my service in City government (1975). I have no official knowledge as to what happened prior to that time.

My response to item 136 is as follows: I would have to agree with my original statement at this juncture. I feel that in the election of mayor protem during the 1979 election, that race was a factor. During the 1975 and 1977 elections the top vote getter was chosen mayor protem because of the vote. During the 1979 election, the reason seemed to have changed to one of experience. I have no strong feelings concerning holding the position of mayor protem. I am concerned about how it's done. I would think we as a Council could discuss the matter openly and decide as a group.

Frankly, I am honored to know the citizens of Wilson desired to have me as one of their elected officials for two terms. I have been honest, fair and open during my tenure in office. My decisions have been based upon issues as I believe they should.

The comments made in item 137 appear to be true yet, a minority has successfully gained a seat on the Wilson City Council on two different elections - 1975 and 1979.

I would have no comments on item 138. My response to item 139 is uncertain. I am not sure a ward system would be beneficial to citizens of Wilson due to its size over a period of time. Such a system would assure greater City Council representation by areas and race as well.

As a member of City Council, I would be willing to exert some effort in exploring the pros and cons of such a system. In case a determination is made by a cross section and representative number of interested citizens that another system would better serve our community, then, I would pursue same.

Response to item 140 - I feel the City Council is opened to the public. There are citizens however, who feel different. I am a minority serving on Wilson City Council and I represent one of seven votes. I am available and very visible to the general public.

Political participation is a function of the individual. I encourage and welcome citizen participation in all public affairs in our community.

I have no comments to items 141 and 142.

A. P. Coleman Affiant
A. P. Coleman

Sworn to and subscribed before me
this the 16 day of July, 1981.

Margie N. Harris
Notary Public

My Commission Expires:

Jan 30, 1986

NORTH CAROLINA

WILSON COUNTY

I, RALPH EL RAMEY, first being duly sworn, depose and say:

That I am the Mayor of the City of Wilson; that I have been a resident of the City of Wilson for 28 years. This is the first time I have been elected to a public office. Since I have been in Wilson, I have not notice any problems with race relations. Since I have no vote on Council except in case of a tie, the office of Mayor Pro Tem made absolutely no difference to me whatsoever. I was aware that Martha K. Walston had served as Mayor Pro Tem very well in my mind and again it matters not to me who ended up being Mayor Pro Tem.

I had recalled through memory and interest in government that the top vote getter was not always named Mayor Pro Tem and therefore the thoughts of the top vote getter being Mayor Pro Tem never entered my mind. I was not contacted by any member of Council for support nor was it ever discussed with me as to who should be Mayor Pro Tem prior to the vote. I did receive a call from Councilwoman Walston stating that she would like to continue as Mayor Pro Tem. None of the other council members contacted me at all prior to the night she was elected.

Let me state that I feel very close to all of the council members and Councilman Coleman has served our City very well.

This the 22nd day of July, 1981.

Ralph El Ramey

Sworn to and subscribed before me
this 22nd day of July, 1981.

Margie N. Davis
Notary Public

My Commission Expires:
Jan. 30, 1986

MAYOR AND MAYOR PRO TEM
SELECTION BY COUNCIL
1965 - 1979

YEAR	NAME	TITLE	STANDING
1965	Edgar Norris	Mayor Pro Tem	4
1967	" "	" " "	5
1969	" "	" " "	Tied 1
1971	" "	" " "	5
1973	Red Benton	Mayor	4
	Edgar Norris	Mayor Pro Tem	6
1975	Charles Leonard	Mayor	3
	Martha Walston	Mayor Pro Tem	1
1977	Martha Walston	Mayor Pro Tem	1
1979	" "	" " "	2

*Council selected Mayor in 1973 and 1975. Mayor was voted on separately in all other elections.

Wilson, North Carolina

After reviewing appropriate sections of this report relating to Wilson, North Carolina, and in light of information provided by Bobby F. Jones, Attorney for the City of Wilson, the Commission responds as follows:

(1) Councilman Coleman continues to feel that race was a factor in the selection of mayor pro-tem after the 1979 city council elections. As now stated in the text of this report, the top vote getters in 1975 and 1977 had been appointed mayor pro-tem. In 1979, after Mr. Coleman received the most votes of all councilmembers elected, he was not appointed mayor pro-tem.

(2) Another black candidate, James Stallings, outpolled Mr. Coleman in three of the four predominantly black precincts in the 1975 council elections. In these four precincts, Mr. Stallings received 954 votes to 820 for Mr. Coleman. In the remainder of the city's precincts, Mr. Stallings received 529 votes and Mr. Coleman received 1,288 votes. The point the Commission continues to make is that the present election system makes it difficult for black candidates, although they may be the first choice of the black community, to be elected in Wilson without support or sponsorship from predominantly white organizations.

BREWER, DEATON, EVANS & BOWMAN
ATTORNEYS AT LAW
107 W. MARKET STREET
P. O. DRAWER 8
GREENWOOD, MISSISSIPPI 38930

TELEPHONE:
AREA CODE 601
453-3445

NORMAN C. BREWER, JR. (1913-1979)
CHARLES M. DEATON
GRAY EVANS
BILLY B. BOWMAN
N. CRAIG BREWER, III

July 14, 1981

Mr. Louis Nunez
Staff Director
United States Commission on Civil Rights
Washington, D. C. 20425

Re: Commission Form of Government
City of Greenwood, Mississippi

Dear Mr. Nunez:

Enclosed please find the verified answer of the City of Greenwood to a portion of a proposed report entitled The Voting Rights Act: Unfulfilled Goals to be issued in the near future by the United States Commission on Civil Rights.

Although your rules and regulations provide that an answer shall be published as an appendix to the report, I would strongly urge that the attached information be considered by your staff and that the statements obtained from plaintiffs' attorneys and their pleadings which form the bulk of your information concerning the government of the City of Greenwood be modified to eliminate the obviously biased nature of the narrative.

Very truly yours,

BREWER, DEATON, EVANS & BOWMAN

Billy B. Bowman

Billy B. Bowman
Attorney for the City of Greenwood

BBB:cs

Encls.

STATE OF MISSISSIPPI
COUNTY OF LEFLORE

VERIFIED ANSWER

Comes now the City of Greenwood, by and through its undersigned attorney, and submits to the United States Commission on Civil Rights, this its verified answer to various statements concerning the City of Greenwood which are anticipated to be included in a report entitled The Voting Rights Act: Unfulfilled Goal.

On October 27, 1980, the case of David Jordan v. City of Greenwood was tried before the United States District Court for the Northern District of Mississippi. Evidence introduced during this trial showed that four blacks have run for an elected office of the City of Greenwood. The evidence concerning these candidates and their campaigns did not show that their failure to be elected was a result of racial bloc voting, but resulted from other valid non-racial reasons. Only one of these candidates, Pinky Pilcher, was defeated in a party primary. Mrs. Pilcher, who ran in the democratic primary in May, 1965, was defeated by a vote of 2,400 to 61 A review of her vote by precincts shows that she failed to receive a majority vote in any of Greenwood's three precincts. [West Greenwood, Mize 856, Pilcher 14; East Greenwood, Mize 173, Pilcher 39; North Greenwood, Mize 1371, Pilcher 8]

Two of the other black candidates, Robert Roberson and John H. Johnson testified for the plaintiffs in Jordan v. City of Greenwood. The evidence showed that both were very young, inexperienced and lacked "real" qualifications. Robert G. Roberson was 26 years old when he ran for commissioner in 1973 and had very little, if any, business experience and no experience in street construction. Mr. Roberson's opponent, Sam Bass, was a successful businessman with extensive experience in street construction, sewer line, and other matters directly related to the duties of the Street and Sanitation Commissioner.

John H. Johnson was 27 years old when he ran for Mayor of the City of Greenwood. The only work experience that Mr. Johnson

had prior to running for mayor involved working in several federal aid projects. Mr. Johnson's opponent, Clay Ewing, was considerably older than Mr. Johnson and was a successful businessman in Greenwood.

Although claiming that they lost the election because of their inability to obtain white votes, both Johnson and Roberson testified that they neither campaigned in white neighborhoods nor actively solicited white support.

It is clear that the Fifteenth Amendment does not entail the right to have a negro candidate elected. City of Mobile, Ala. v. Bolden, ___ U.S. ___, 64 L.Ed. 2d 47, 100 ES. Ct. 1490 (1980).

The evidence introduced during this trial clearly refuted the allegation that a commission form of government was "unresponsive to the particular needs and interests of the black community." The proof presented by the City of Greenwood showed that the commission form of government was clearly responsive to the needs of the "particularized interest" of the plaintiffs' group. It is interesting to note that plaintiffs' witnesses could not give any examples of the "particularized interest" of the black community which the Council had failed to meet other than the alleged failure of the City Council to appoint to city boards and agencies those persons nominated or suggested by plaintiffs and the political action group they represent or allow the plaintiffs' organization to select various appointees of the City of Greenwood.

It is unquestioned that services such as streets, water, sanitation, schools, and police and fire protection are provided equally to all portions of the City of Greenwood. There was no showing that the persons, both black and white, appointed by the City Council of the City of Greenwood have not been responsible to the needs of the total communtiy, including blacks. The proof showed that this City Council had taken great strides to see that blacks were appointed to serve on city boards or commissions which could possibly have jurisdiction over matters which would be of special interest to the black rather than the white communtiy. The Municipal Separate School District Board of Trustees is comprised of two blacks and three whites; the Greenwood-Leflore Library Board

is composed of two blacks and three whites; the Greenwood Park Commission is comprised of two blacks and three whites; the City Election Commission is comprised of one black and two whites; the Housing Board of Adjustment and Appeals is comprised of two blacks and three whites and the Greenwood Housing Authority is comprised of one black and three whites, however, there is a vacancy on the Housing Authority which resulted from the death of a black member.

While the plaintiffs contend that a seven member city council elected by wards, drawn to insure a minimum of 60% black population majority in at least three wards would resolve many unstated problems of the black community, they produced little evidence to show that the citizens of Greenwood either wanted or desired this change of government. The only evidence produced as to the desires of the citizens of Greenwood concerning the form of government was a referendum held on this issue which overwhelmingly rejected the change to a mayor-council form of government.

On July 13, 1977, the plaintiffs presented a petition containing the names of 2,186 qualified electors seeking an election to determine if the City of Greenwood should change its form of government. This special election was held on September 6, 1977 with 2,766 electors voting for the present (Commission) form of government and 1,069 voting for the propsed mayor-council form of government.

Respectfully submitted, this the 14th day of July, 1981.

Billy B. Bowman

Billy B. Bowman, Attorney for the
City of Greenwood, Mississippi

STATE OF MISSISSIPPI
COUNTY OF LEFLORE

Personally appeared before me, the undersigned authority in and for the above mentioned jurisdiction, the above named BILLY B. BOWMAN, attorney for the City of Greenwood, who, upon his oath

stated that the above matters contained in the Verified Answer are true and correct as therein stated.

Billy S. Bowman

Billy S. Bowman, Attorney for the
City of Greenwood, Mississppi

SWORN to and subscribed before me, this the 14th day of July, 1981.

Pauline D. Howell
NOTARY PUBLIC

My Commission Expires: 10-22-82

Greenwood, Mississippi

After reviewing appropriate sections of this report relating to Greenwood, Mississippi, and in light of information provided by Billy B. Bowman, attorney for the City of Greenwood, the Commission responds as follows:

(1) The Commission notes that from 1965 until 1981, six black candidates have run for office in Greenwood and all have been defeated. The primary reason for their defeat has been racial bloc voting in the context of an at-large election system where blacks are a minority of registered voters. For example, none of the six black candidates received more than 2 percent of the vote cast in the predominantly white North Greenwood Precinct. On the other hand, all of the six black candidates, with the exception of the first black to run in 1965, won majorities in the predominantly black East Greenwood Precinct.

(2) The Commission notes that Mrs. Pinky Pilcher was defeated in all three Greenwood Precincts in her race for city commissioner in 1965. The Commission, however, also notes that this race preceded the passage of the Voting Rights Act which led to the designation of Federal Examiners to aid in the registration of minorities in the Greenwood area (Leflore County). The Department of Justice has estimated that black registration in all of Leflore County in 1964 was 281 or 2.1 percent of the black voting age population. It is therefore possible that the 61 votes that Mrs. Pilcher received in the May 11, 1965 race for commissioner reflected support from the majority of blacks in that city who were registered to vote.

(3) The special election held on September 6, 1977 seeking to change the form of city government to a mayor-council system with seven wards also reflected racial bloc voting. Ninety-seven percent of the voters in the predominantly white North Greenwood Precinct approved of the present commission form of government while 79 percent of the voters in the predominantly black East Greenwood Precinct voted for the change.

(4) The Commission continues to assert that black representation on Greenwood city boards and commissions is limited. As now stated in the text, there are seven city boards and commissions with one black member apiece and an additional seven boards and commissions without any black members. This information is taken from the final pretrial order of October 27, 1980 in which these facts were established by the pleadings, stipulation or admission of both parties. The City of Greenwood's figures showing a higher number of blacks on city boards and commissions may be due to appointments made subsequent to the pretrial order.

LAW OFFICES

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Attorneys At Law
Professional Corporation

BOB FAULK
BUSTER LANDREAU

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POST OFFICE BOX 837
TELEPHONE (205) 297-1222

July 2, 1981

Honorable Louis Nunez
United States Commission
on Civil Rights
Washington, D.C. 20425

Re: Town of Hurtsboro

Dear Mr. Nunez:

As Town Attorney I have been requested by the Town Council of the Town of Hurtsboro to write you in regard to recent communications you have had with the Hurtsboro Town Council. While we are unsure what you are asking for from your letter we are acting under the assumption that you desire some sort of response to the two-page summary of material which you included in the letter.

The Council's reasons for rejecting the annexation of a subdivision known as Twin Gates located just outside of the Hurtsboro City limits is well documented in the Minutes of the Council meetings of the Town of Hurtsboro. As you will note if you bother to check those Minutes the reasons for the refusal to annex this area are purely economic in nature and are not those cited in the material which you submitted to Council. A check of the Minutes of the Town Council meetings which are public records would confirm that fact and I would suggest you check those.

The Town Council further wished me to express to you the fact that the Town of Hurtsboro and the Town Council is appalled at the summary of material which you submitted to them. More particularly we are dismayed that you would compile this material solely from such biased sources as the attorney representing a group seeking the annexation and a complaint filed by that same group with the Revenue Sharing Department. This is hardly an unbiased and unprejudiced viewpoint, yet I note that you apparently failed to check your sources and failed to verify their statements by the public records which are available. The Town Council hardly feels that such biased methods of attaining information to file a report does justice to the report or to the goals of the United States Commission on Civil Rights. Should you wish to countercheck your information by interviewing members of the Council or by checking the records we will be glad to assist you.

Suffice it to say at this point that it would appear that your organization is not interested in getting a full and neutral view of the controversy concerning the annex of Twin Gates but prefers to rely solely on the unsupported statements of the parties seeking annexation. Once again, the Town Council in response to these allegations simply would like to make it clear that these allegations are simply that, bald-faced allegations not supported by facts and are entirely incorrect. Council's reasons for rejecting the annexation were economic not racial and any attempt to portray the rejection of the annexation as a racial matter does injustice both to the Town of Hurtsboro and to the United States Commission on Civil Rights.

Sincerely yours,

Buster Landreau

Buster Landreau

BL/bj

c: Honorable John Williams

Hurtsboro, Alabama

After reviewing appropriate sections of this report relating to Hurtsboro, Alabama, and in light of information provided by Buster Landreau, Town Attorney for Hurtsboro, Alabama, the Commission responds as follows:

(1) The Commission expended considerable time in collecting information concerning the city's decision not to annex the Twin Gates area. Commission staff reviewed material in local newspapers on the council deliberations and interviewed a councilmember present at the deliberations. As stated in the text of this report, the economic argument made by the majority of the council was that it would be too costly to the city to provide services to this area. No data or information collected by Commission staff points to any other "purely economic" reasons for refusing to annex the Twin Gates area.

(2) The minutes from the Hurtsboro Town Council meeting held on March 19, 1980 do not specifically state any reason for not annexing the Twin Gates subdivision. They state that "after much discussion" the motion to annex Twin Gates failed for lack of a second.

CITY OF OPELIKA

P. O. BOX 390
OPELIKA, ALABAMA 36802
TELEPHONE (205) 749-3481

July 15, 1981

BOARD OF COMMISSIONERS

D. B. Jones
President
Finance

Guy Thompson
Associate
Public Works
Light & Power

Kyle S. Drake, Jr.
Associate
Public Safety

ADMINISTRATION

J. Newell Floyd
City Clerk/Treasurer

Garry K. Pugh
Executive Secretary
Records Manager

Z. T. Jones
Planning & Programs
Coordinator

Eddie Ambrose
Data Processing
Manager

John Jones
Personnel Director

FINANCE

Zane E. Burleson
Finance Director

Miriam Hamby
Accounting Supervisor

L.E. (Edna) Goodson
Revenue Officer

Joe S. Jackson
Licenses & Tax Examiner

Linda D. LaGrone
Supervisor
Revenue Section

UTILITIES BUSINESS OFFICE
Customer Services
T. Randy Awbrey
Assistant
Office Manager

BOARDS

Planning Commission
Zoning Adjustment

United States Commission on Civil Rights
Washington, D. C. 20425

Attention: Louis Nunez

Gentlemen:

The City of Opelika acknowledges receipt of your letter dated June 22, 1981 and the enclosed summary of material pertaining to the City of Opelika. The letter was received by us on June 26, 1981.

Your letter indicates that the Commission actively solicits the response of the City to the matters referred to in said summary. Therefore, the Board of Commissioners has authorized D. B. Jones, as President of the Board, to respond to the statements contained in the summary.

I am enclosing the verified response of Mr. Jones, and the City does hereby request that his response be published as an Appendix to the report.

Yours very truly,

J. Newell Floyd
City Clerk

JNF/gp

Enclosures

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VERIFIED RESPONSE OF D. B. JONES TO SUMMARY OF MATERIAL ENCLOSED IN LETTER OF JUNE 22, 1981 FROM THE UNITED STATES COMMISSION ON CIVIL RIGHTS TO THE OPELIKA CITY COMMISSION

Before me, the undersigned authority, a notary public in and for the State of Alabama, Lee County, personally appeared D. B. Jones, who being by me first duly sworn, deposes and says as follows:

I am D. B. Jones, President of the Board of Commissioners of the City of Opelika, Alabama. I make this affidavit for the purpose of responding to a summary of certain material pertaining to the City of Opelika which the United States Commission on Civil Rights anticipates will be included in a report entitled, The Voting Rights Act: Unfulfilled Goals, hereinafter referred to as "report".

The City of Opelika is organized under the Commission Form of Government and its governing body is composed of three commissioners. Each commissioner is elected at large and serves a three-year term. All municipal board members and all departmental officials are appointed by the Board of Commissioners.

The City of Opelika adopted the Commission Form of Government in 1936. In January, 1978, the Lee County Branch of the NAACP and others brought a suit in the United States District Court for the Middle District of Alabama alleging that Opelika's Commission Form of Government is being maintained for the purpose of discriminating against blacks. The City of Opelika vigorously denied the allegations made in said complaint and denies the truth of such allegations today. The case is currently pending in the District Court. However, I am unaware of any court decision holding that the governing body of this City has discriminated against the City's black population.

It is apparent that the information in the "report" pertaining to the City of Opelika was collected entirely from the plaintiffs of the class action suit or their legal representatives. As such, it represents a grossly distorted picture of the political realities of Opelika.

Blacks have total access to participation in all phases of the election processes in Opelika. Race has not been an issue in any recent City election. Candidates campaign throughout the City and white candidates normally seek the endorsement of black organizations. Court evidence indicates that blacks have supported and voted for white candidates and that white voters have shown increasing willingness to support black candidates. Although a black has not been elected to the office of Commissioner, better-known blacks have not chosen to offer themselves for election.

Since the implementation of the Voting Rights Act, black citizens have not been impaired in their rights to register, slate candidates, and vote for candidates of their choice. In fact, voting places are, for the most part, more conveniently situated to black neighborhoods than to white neighborhoods.

The "report" cites statements made by Rev. A. L. Wilson that the City Commission has used the "informal practice" of filling Commission vacancies as device to perpetrate white power in Opelika. Section 11-44-12 of the Code of Alabama mandates that whenever any vacancy shall occur in the office of any Commissioner of any City, then his successor shall be elected by the two remaining members of the Board of Commissioners. I can recall only two such vacancies occurring on the Board of Commissioners of the City of Opelika within the last twenty years. One such vacancy occurred upon the death of a Commissioner and the second such vacancy occurred upon the resignation of a Commissioner who had been indicted for violations of Federal banking laws. The occurrence of such vacancies hardly seem the result of a conspiracy to deprive blacks of access to the political system. The two remaining members of the Commission filled such vacancies by selecting persons whom they deemed most qualified to hold the office. Because the Commission members are personally acquainted with the leaders from all segments of the community, recommendations were not sought from any group, black or white. However, on several occasions, the City Commission has requested that black organizations submit to the Commission names of qualified persons who would be willing to serve on municipal boards or committees.

The City of Opelika catergorically denies that it has not been responsive to the needs of black citizens in this regard. The "report" cites problems in employment as well as problems related to access to municipal services.

The City has adopted a written policy of non-discrimination in the hiring, termination, and classification of employees. No suits have been filed against the City or any of its officials by individuals, organizations, or by the Department of Labor or the Equal Employment Opportunity Commission alleging discriminatory hiring practices. United States Census statistics indicate that in regards to black employment, the City of Opelika has consistently out-performed the private sector in this area. Referring to data introduced into evidence in the class action suit filed in January, 1978, while 27.6% of the labor market in Lee County was black, 28% of the City's work force was black. 10% of the City's clerical positions and 10% of its managerial positions were filled by blacks. Additionally, 37% of the administrative and clerical positions within the Water Board of the City were filled by blacks; 60% of the managerial positions with the Housing Authority of the City of Opelika were filled by blacks; and 29% of the principals employed by the Opelika Board of Education were black. Moreover, according to Census manpower statistics for Lee County, only a small percentage of blacks were available for employment in the skilled managerial and clerical areas of employment.

As an example of the City's unresponsiveness to the black community in access to City services, the "report" cites that in 1978 twice as many black households were located on dirt streets than were white households. While admitting the truth of this statement, this condition was not the result of governmental action. During the decade of the 1970's, the City of Opelika paved and re-surfaced with the City's own funds, 30% by mileage more streets and roads in predominately black areas of the City than in predominately white areas. Additionally, hundreds of thousands of dollars of Community Development funds were expended to pave and resurface roads in predominately black neighborhoods. During this same decade, almost all roads in predominately white neighborhoods were paved by private developers without any expenditure of public funds. The developers recouped their costs when lots were sold to new homeowners. Significantly, very few citizens of Opelika, white or black, live on unpaved roads.

In other areas of municipal service, the "report" neglects to mention that a higher percentage of black households than white households are connected to the City's sanitary sewer system and the City's water system. The City Library, City Hall, Fire Station, and Police Station are more conveniently located to predominately black neighborhoods of the City than predominately white neighborhoods.

The City of Opelika runs a truly outstanding recreation program. All recreation facilities and programs are open to all citizens regardless of race. Most of the recreation facilities are closer to black neighborhoods than to most white neighborhoods. If the City is lacking in any aspect of its recreation program, it is in the development of recreation facilities in the outlying white neighborhoods of the City.

In the area of responsiveness, the City Commission has sought out the opinions of black citizens and has attempted to provide assistance on problems concerning the black community. The City Commission has channeled a disproportionately higher percentage of City funds into predominately black neighborhoods to improve municipal services.

Lack of black representation on the City Commission does not equate to an unresponsiveness of City officials to black concerns or to inaccessibility of blacks to the political system. Recognizing the truth of this last statement, the United States Constitution has never been interpreted to require that members of a minority race must be elected in numbers equal to the minority's percentage of the general population.

In conclusion, the City of Opelika denies that it has violated any of the provisions of the 14th and 15th Amendments or Section 2 of the Voting Rights Act. For a more complete explanation of the City's position, I am attaching hereto and requesting that it be incorporated as a part of the record, a copy of the City's post-trial brief filed in that certain action styled Lee County Branch of the NAACP, et al versus the City of Opelika, pending in the United States District Court for the Middle District of Alabama, Civil Action No. 78-13-E.

IN WITNESS WHEREOF I have hereunto set my hand this the 15th day of July, 1981

D. B. Jones, President
Board of Commissioners of the
City of Opelika

SWORN TO and SUBSCRIBED before me this the 15th day of July, 1981.

Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

LEE COUNTY BRANCH OF THE NAACP; et al.,	]	
Plaintiffs,	]	
vs.	]	CIVIL ACTION NO. 78-13-E
THE CITY OF OPELIKA, ALABAMA; et al.,	]	
Defendants.	]	

DEFENDANTS' RESPONSE TO PLAINTIFFS' SUPPLEMENTAL PROFFER OF EVIDENCE

Introduction

Defendants are once again faced with responding to another attempt by Plaintiffs to reopen the record in this case and present additional evidence. Our recollection of the Court's rulings in the in-chambers hearing held on November 14, 1980, differ substantially from that of Plaintiffs' counsel. Plaintiffs state that the Court "indicated that it would entertain a renewed motion based on a more specific proffer [of evidence concerning the period since 1970.]" Our recollection is that, after a detailed discussion of each item of evidence, the Court stated that it would deny each and every offer of evidence thus far made but would allow the Plaintiffs an additional ten days in which to make specific showings of evidence relating to matters which occurred since 1970 and which, because of the state of the law at the time of trial, may not have been offered in evidence. In this connection, the Plaintiffs opined that they might be able to come up with some evidence involving contacts between members of their class and members of the Lee County legislative delegation.

However, in their most recent supplemental proffer of evidence, the Plaintiffs once again make a generalized request for the Court "to reopen these proceedings," and state that if that is done they can develop further evidence with additional time. Since it appears that the Plaintiffs' proffer departs

so far from the type of evidence which this Court seemed to have in mind when it granted them additional time in which to make a showing, our response will be brief.

I.

Events Since the Trial in August, 1978

The Plaintiffs state that they wish to offer additional evidence concerning black citizens' "continued lack of access to the political process" and the "continuing unresponsiveness of the City to Blacks' needs." We call the Court's attention to the use of the term "continued." The Plaintiffs simply propose to offer repetitious and cumulative testimony of exactly the same nature as that offered at the original trial for the stated purpose of showing that things have not changed since that time. Of course, the fact that similar evidence about the same subjects was given at the original trial demonstrates that the proposed evidence does not relate to matters which were not offered into evidence because of "the state of the law at the time of trial." It is obvious, also, that the two major areas of inquiry at the original trial involved allegations of racial polarization and allegations of unresponsiveness of the City to Blacks' needs, and that a generalized inquiry into these areas would simply be an extension of the original trial for no purpose other than allegedly "confirming" the evidence they offered earlier. In Bolden the Supreme Court held that the equal protection clause does not require proportional representation and does not protect any "political group" from electoral defeat, although it does confer a substantive right to participate in elections on an equal basis with other qualified voters. The evidence which Plaintiffs propose to offer does not relate to that recognized substantive right. They have not proposed to offer any evidence that Defendants have denied or abridged the rights of Black citizens to register, vote, slate candidates of their choice, or otherwise participate on an equal basis with other qualified voters. As for the evidence of alleged discrimination by white officials, not only was

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this category of evidence the subject of exhaustive testimony at trial, in Bolden, a plurality of judges agreed that such evidence is relevant only as the most tenuous and circumstantial evidence of the constitutional and validity of the electoral system under which they attain their offices. Such evidence is relevant only in accordance with the standards set forth in Zimmer v. McKeithen, although the Zimmer test has now been decisively rejected. There is certainly no reason to offer additional evidence of such a tenuous nature.

In short, the Plaintiffs' offer of proof presents nothing knew and fails to meet the evidentiary standard enunciated by the Supreme Court in Bolden.

In a footnote, the Plaintiffs' have referred to alleged efforts by Opelika citizens to obtain a change in the form of government through legislation. We are unable to tell whether or not they seek to proffer testimony on this point. If so, as we pointed out in our last reply brief, the legislators are not parties to this suit and if they wish to attack them they should do so in a separate action with the proper parties. As the Bolden plurality noted, "the actions of unrelated governmental officials [is]...of questionable relevance." 64 L.Ed.2d 47, 63, n 20.

II
Expert Testimony

It was our recollection that the Court did not intend for the Plaintiffs to respond further with respect to its decision not to reopen the case to allow the evidence proposed to be illicited from Margaret Latimer, Larry Riehle, Dr. Currie and Dr. Maitre. We have previously responded at some length to such proposal and pointed out that Bolden, if it did anything at all, condemned rather than approved the use of such "remote evidence" in attempting to prove a discriminatory purpose, that the Bolden plurality noted that the Fifteenth Amendment "prohibits on purposefully discriminatory denial or abridgment by government of the freedom to vote on account of race, color, or previous

condition of servitude"(63 L.Ed.2d at 57), and that much of the evidence which the Plaintiffs propose to offer as to the electorate is cumulative and was or could have been offered by Plaintiffs at trial. For a more detailed discussion, we refer the Court to Defendants' Reply Brief in Opposition to Plaintiffs' Motion for Leave to Reopen the Record, pp. 6-8.

CONCLUSION

In conclusion, the Plaintiffs' Proffer of Evidence falls far short of showing that the City of Opelika conceived or operated a purposeful device to further racial discrimination. The Plaintiffs' offer of proof presents nothing new and fails to meet the evidentiary standard enunciated by the Supreme Court in Bolden. The Plaintiffs have not offered evidence which, because of the state of law at the time of the trial, was not offered.

Therefore, Defendants respectfully submit that this Court should enter an order denying the Plaintiffs' several motions to reopen and proffers of evidence and, thereafter, bring this litigation to a close by entering an order in the case in chief denying relief to the Plaintiffs and finding that Opelika's commission form of government is not being maintained by these Defendants as a purposeful device to discriminate against Opelika's black citizens.

Respectfully submitted,

Thomas S. Lawson, Jr.

Guy F. Gunter, III

OF COUNSEL:

CAPELL, HOWARD, KNABE & COBBS, P.A.
Post Office Box 2069
Montgomery, AL 36197
(205) 262-1671

MELTON, GUNTER & MELTON
Post Office Box 2187
Opelika, AL 36801

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon Stephen J. Ellmann, Esq., and John L. Carroll, Esq., attorneys for Plaintiffs, 1001 South Hull Street, Montgomery, Alabama 36104, by U.S. Mail, first class postage prepaid, on this the 9th day of December, 1980.

OF COUNSEL

Opelika, Alabama

After reviewing appropriate sections of this report relating to Opelika, Alabama, and in light of information provided by D. B. Jones, President, Board of Commissioners of the City of Opelika, the Commission responds as follows:

(1) The Commission agrees that blacks in Opelika often have supported white candidates. The Commission notes, however, that the primary reason for the defeat of all black candidates who have run for municipal office in Opelika is lack of support for these candidates in the white community. Since blacks first began running for office in Opelika in 1969 no black candidate has ever carried a single voting box (precinct) in a predominantly white neighborhood.

(2) The Commission does not suggest that the Opelika city commission has violated the Code of Alabama in filling vacancies on the city commission. It does, however, note that these vacancies have been filled as a result of an informal process in which Opelika's black community had little if any input. While only two such vacancies on the commission may have been filled by appointment in the last twenty years, two of the current three commissioners first gained office in this fashion.

LAW OFFICES OF
Lola L. Bonner
BAYVIEW PROFESSIONAL BUILDING
ROCKPORT, TEXAS 78382

P. O. DRAWER 908
PHONE 512/729-2353

July 17, 1981

Mr. Louis Nunez, Staff Director
United States Commission on
Civil Rights
Washington, D. C. 20425

Dear Mr. Nunez:

Pursuant to your recent correspondence directed to the undersigned, I have prepared and enclose Verified Answer to the information received.

If I correctly understand Section 702.18 of the Rules and Regulations provided me, this will be published as an appendix to the Report. If I am incorrect, please so advise.

Yours very truly,

LOLA L. BONNER

LLB:ch

cc: Caroline Davis Gleiter
Assistant Staff Director
United States Commission on Civil Rights
Washington, D. C. 20425

TO THE HONORABLE UNITED STATES COMMISSION ON CIVIL RIGHTS:

NOW COMES the Aransas County Democratic Executive Committee, by and through its Chairman, LOLA L. BONNER, as pursuant to Statutes, Rules and Regulations pertaining to same, files this, its Verified Answer to the material heretofore provided and would respond as follows:

I.

The Aransas County Democratic Executive Committee was furnished with a summary of certain material, copy of which is attached hereto for reference, which the Committee understands will be included in a report prepared by the United States Commission on Civil Rights and pertaining to the Voting Rights Act.

II.

The Aransas County Democratic Executive Committee was furnished a one-page excerpt by the Staff Director and was not apprised as to where in the report it was expected to be placed. We know not in which chapter, sub-chapter or phase of the report this information is to be used and feel that it would be appropriate for us to be so advised.

III.

The third line of the excerpt states that "the local Democratic party did not endorse him...", without stating that "the local Democratic party (assuming the report is referring to the ACDEC) never supports anyone during the Democratic Party Primaries.

The ACDEC is not obligated either by statute or policy to endorse a Democratic candidate during the Democratic Primaries. It is the statutory duty of ACDEC to hold a Democratic Primary

Nomination, determine the candidate of the Democrat's choice to appear on the General Ballot and to then, under Party Rules, support and endorse such candidates over all other Parties candidates.

IV.

It is true that the Aransas County Democratic Executive Committee did not choose the Mexican American candidate to serve as the Party's nominee for the General Election and did not do so because of his general reputation in the community. The Committee did choose a member of another minority group, to-wit, a woman, to serve as the Party's nominee.

V.

The Aransas County Democratic Executive Committee, did, in all instances referred to in the excerpt, follow the applicable portions of the Texas Election Code, which portions are attached hereto and made a part hereof by reference.

VI.

The Aransas County Democratic Executive Committee had nothing to do with advertisements referred to in the excerpt.

VII.

At the time in question, the voting precinct in question and one other one in the County had the heaviest concentration of Mexican American voters. The voters rejected the Mexican American candidate, not the Aransas County Democratic Executive Committee.

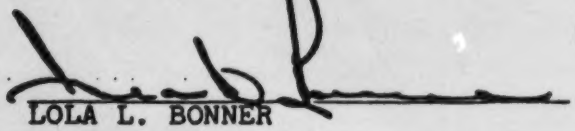
Respectfully Submitted,

LOLA L. BONNER, Chairman
Aransas County Democratic
Executive Committee

THE STATE OF TEXAS §

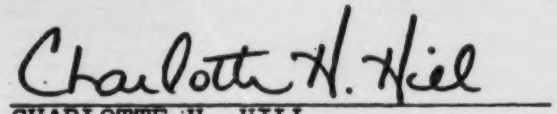
COUNTY OF ARANSAS §

BEFORE ME, the undersigned authority in and for said State and County on this day personally appeared LOLA L. BONNER, who, being by me first duly sworn, deposes and states that she has read the foregoing Answer to a Report, to be used before the United States Commission on Civil Rights, and that all of the allegations and information contained therein are true and correct.



LOLA L. BONNER

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 17th day of July, A. D., 1981.



CHARLOTTE H. HILL
NOTARY PUBLIC in and for
The State of Texas
My Commission Expires: 3-2-85

(SEAL)

Art. 8.22 Death or ineligibility of candidate before election

(a) When the name of a deceased or ineligible candidate is printed on the ballot for a general or special election, as provided in Section 233 of this code,[1] the votes cast for him shall be counted and return made thereof; and if he receives a plurality of the votes cast for the office where a plurality is sufficient for election, or if he receives a majority of the votes cast for the office where a majority is required for election, the vacancy shall be filled as in the case of a vacancy occurring after the election. If he is one of the two highest candidates in an election where a majority is required and no one has a majority, the two candidates with the highest votes other than the deceased or ineligible candidate shall be certified as the two highest candidates for the runoff election.

(b) If after the 45th day preceding the first primary election, a candidate in that primary dies or is declared ineligible to be elected to the office, his name shall be printed on the first primary ballot and the ballots cast for him shall be counted and a return made thereof. If such a deceased or ineligible candidate receives a majority of the votes, the proper executive committee shall choose a nominee and certify such name to the proper officer, as provided in Section 233 of this code,[1] to be printed on the general election ballot. If such a deceased or ineligible candidate is one of the two highest candidates in that race in the first primary and if no one has a majority vote, the two candidates with the highest votes, other than the deceased or ineligible candidate, shall be certified to have their names printed on the second primary ballot. If a candidate whose name is to appear on the second primary ballot dies between the dates of the first and second primaries, his name shall be printed on the second primary ballot and the votes cast for him shall be counted and returned for him; and if such a deceased candidate receives a majority of the votes in the second primary, the proper executive committee shall choose a nominee and certify his name to the proper officer, as provided in Section 233 of this code, to be printed on the general election ballot. Withdrawal of a candidate in the second primary is regulated by Section 204a of this code.[2]

Amended by Acts 1967, 60th Leg., p. 1901, ch. 723, § 32, eff. Aug. 28, 1967. Par. (b) amended by Acts 1969, 61st Leg., p. 2662 ch. 878, § 25, eff. Sept. 1, 1969; Par. (a) amended by Acts 1975, 64th Leg., p. 2104, ch. 685, § 2, eff. Sept. 1, 1975; Par. (b) amended by Acts 1977, 65th Leg., p. 883, ch. 332, § 2, eff. Aug. 29, 1977.

[1] Article 13.56.
[2] Article 13.26a.

Synopsis of Changes—1967

The provision for keeping the name of a deceased candidate on the first primary ballot if death occurs after the deadline for filing is changed to provide for retention of his name if death occurs after the 30th day preceding the election, in keeping with an amendment to Art. 13.12, below. The provision for keeping on the ballot the name of a nominee who has died or declined the nomination if no one is nominated to take his place is amended to include an ineligible nominee also.

Cross References

Application for place on ballot, see art. 13.12.

Death, withdrawal or ineligibility of candidate, applicability of this article, see art. 13.56(d), (f), (g).

Ineligibility to be candidate for public office, see art. 1.05.

1. Validity

Paragraph (a) of this article does not deprive voters of their constitutional right guaranteed by Const. Art. 5, § 23, to elect a sheriff. Parker v. Nobles (Sup.1973) 496 S.W.2d 921.

Paragraph (a) of this article does not unconstitutionally restrict the right of franchise, due process or equal protection. Id.

such application was not signed during the current voting year (March 1, 1970 through

Art. 13.56 Death, withdrawal, or ineligibility of candidate; filling vacancy in nomination

(a) A nominee of a political party may decline and annul his nomination by delivering to the officer with whom the certificate of his nomination is filed and to the chairman of the executive committee having the power to fill a vacancy in such nomination, not later than the 45th day before the day of the general election, a declaration in writing, signed by him and acknowledged before some officer authorized to take acknowledgments, whereupon the officer receiving the declaration shall take the necessary action to have the name of the nominee removed from the ballot. A nominee may not decline the nomination after the 45th day before election day.

(b) If on or before the 45th day before the day of the election, a nominee dies or declines the nomination, or is declared ineligible to be elected to or to hold the office for which he is a candidate, the executive committee of the party for the state, district, county, or precinct, as the office to be nominated may require, may nominate a candidate to supply the vacancy. A certificate of such nomination, signed and duly acknowledged by the chairman of the executive committee, must be filed with the officer with whom the certificate of the original nomination was filed and must set forth the name of the original nominee, the cause of the vacancy, the name of the new nominee, the office for which he was nominated, and when, where, by whom, and how he was nominated. The certificate must be filed not later than the 40th day before the day of the election. The officer with whom the substitute nomination is filed shall immediately take the necessary action to cause the name of the new nominee to be placed on the ballot.

(c) In any case where a district committee is empowered to name a nominee and fails to do so, the state executive committee may name a candidate for such office and certify the name to the proper officer to have the name printed on the official ballot for the general election. The certification must be filed not later than the 5th day after the deadline for certification by the district committee and in any event not later than the 40th day before election day.

(d) If a party nominee dies or declines the nomination or is declared ineligible after the 45th day preceding the day of the general election, the procedure set out in Section 104 of this code [1] shall be followed.

(e) An independent candidate may withdraw his candidacy and cause his name to be kept off the ballot by delivering to the officer with whom the application requesting his name to be placed on the ballot was filed, not later than the 40th day before election day a declaration in writing, signed and duly acknowledged by him, whereupon the officer with whom the declaration is filed shall immediately take the necessary action to cause the candidate's name to be removed from the ballot. A candidate may not withdraw after the 40th day before election day.

(f) If an independent candidate in the general election for state and county officers withdraws or is declared ineligible before the 44th day before election day, his name shall not be printed on the ballot. If he dies after completing all the procedural requirements for candidacy and before the 44th day before election day, his name shall be printed on the ballot if he was the incumbent in the office for which he was a candidate or if no other candidate's name is to be printed on the ballot in that race; otherwise, his name shall not be printed on the ballot. If he dies or is declared ineligible after the 45th day before election day, his name shall

be printed on the ballot. When a deceased or ineligible candidate's name is printed on the ballot, the procedure set out in Section 104 of this code shall be followed.

(g) If an independent candidate in any election other than the general election for state and county officers dies before the second day before the filing deadline for independent candidates in that election, or if he withdraws or is declared ineligible before the 20th day before election day, his name shall not be printed on the ballot. If he dies on or after the second day before the filing deadline or if he is declared ineligible on or after the 20th day before election day, his name shall be printed on the ballot and the procedure set out in Section 104 of this code shall be followed.

(h) When a candidate dies and his name is to be removed from the ballot under any provision of this section, the officer responsible for making up the ballot for the election shall remove the candidate's name upon receiving reliable information of the death. However, in the case of a candidate whose name is certified to the county clerk by the secretary of state, the clerk shall not remove the candidate's name from the ballot without authorization from the secretary of state.

(i) The provisions of this section in regard to independent candidates apply to all general and special elections, by whatever authority held, except that charter provisions of a home-rule city supersede the provisions of this section. The term "independent candidate" means any candidate, not the nominee of a political party in a partisan election, who is seeking ballot position in any general or special election.

Subsecs. (b), (c) and (e) amended by Acts 1967, 60th Leg., p. 1924, ch. 723, § 62, eff. Aug. 28, 1967. Amended by Acts 1975, 64th Leg., p. 2104, ch. 685, § 3, Sept. 1, 1975; Subsecs. (a) to (f) amended by Acts 1977, 65th Leg., p. 887, ch. 332, § 5, eff. Aug. 29, 1977.

[1] Article 5.12.

Synopsis of Changes—1967

Amended to make the section applicable to vacancy arising from ineligibility as well as from death or declination, and to provide for nomination by the precinct committee, created by the amendment to Art. 13.18a, where the vacancy is for an office of a justice or commissioners precinct. Also rewords the provision on power of the state committee to name a nominee for a district office.

Cross References

Conduct of elections, death or ineligibility of candidate before election, see art. 5.12.

State officers and employees, financial statement of nominees under this article, see Vernon's Ann.Civ.St. art. 6252—9b, § 3(f).

Supplementary Index to Notes

Mandamus 6

6. Mandamus

In mandamus action in which relator sought to compel county chairman of political party to certify relator as nominee of party for office of county commissioner of precinct of county, to order county clerk to place relator's name on ballot, and to enjoin county clerk from placing name of respondent on ballot, granting writ of mandamus was precluded by existence of factual issue as to whether relator had ever been nominated by party for office after death of individual who had been elected as nominee in primary election. Stroud v. Beggerly (Civ.App.1976) 542 S.W.2d 229.

Art. 13.57 Party name

No new political party shall assume the name of any preexisting party; and the party name printed on the official ballot shall not consist of more than three words. As used in this section, the term "preexisting party" does not include a political party which is no longer in existence.

Amended by Acts 1969, 61st Leg., p. 2662, ch. 878, § 36, eff. Sept. 1, 1969.

Aransas County, Texas

After reviewing appropriate sections of this report relating to Aransas County, Texas, and in light of information provided by Ms. Lola L. Bonner, Chairman, Aransas County Democratic Executive Committee, the Commission responds as follows:

(1) The Commission does not suggest that the Aransas County Democratic Executive Committee has violated the Texas State Election Code. As now stated in the text, this is made clear. The Commission, however, notes that the Aransas County Democratic Executive Committee did not nominate a Mexican American candidate in a situation where it had the opportunity to do so. Rather than nominate the Mexican American, who was the only living candidate on the ballot, the Executive Committee nominated an Anglo who was not on the ballot.

(2) The Commission notes that there is not sufficient evidence to support the implication that Mr. Zambrano, the Mexican American candidate, was rejected by both Anglo and Mexican American voters. Subsequent Commission research has revealed that Mexican Americans comprise 18 percent of the registered voters of the precinct in question and Mr. Zambrano received 26 percent of the vote. Unless individual ballots could be identified by ethnicity, voting trends of Anglos versus Mexican Americans cannot be determined. Therefore, an equally plausible conclusion could be that most of Mr. Zambrano's support came from Mexican American voters.

Defame/Degrade Responses: Chapter 7

City and County of Denver

ELECTION COMMISSION

414-14th Street, Room 118 • Denver, Colorado 80202 • 303/575-2351

DONALD M. NICHOLSON, President
F.J. SERAFINI, Commissioner
SYLVIA R. DENNIS, Commissioner
DALE E. NOFFSINGER, Director

July 1, 1981

Mr. Louis Nunez
Staff Director
U. S. Commission on Civil Rights
Washington, D. C. 20425

Dear Mr. Nunez,

We are in receipt of your letter dated June 22nd and also a letter dated June 24th from Caroline Gleiter of your office.

With one exception, there is nothing in the information enclosed with your letter that we see a need to respond to, in that the quotations are personal opinions of various individuals.

The exception, is the statement that, "in Colorado bilingual material at the polls must be requested". In Denver that statement is untrue. Sample ballots printed in both English and Spanish are lying in plain sight on the table where an elector must start in the voting process, at a Precinct Polling place.

Please be advised that I am speaking only for the City and County of Denver.

Sincerely,

Dale E. Noffsinger
Director

DEN:bj

cc: Betty Chronic
Secretary of State

MARY ESTILL BUCHANAN
Secretary of State
State Capitol Building

DEPARTMENT OF STATE
1575 Sherman Street — Second Floor
Denver 80203

ADMINISTRATION 866-2781
CORPORATIONS 866-2361
ELECTIONS 866-2041
LICENSING & ENFORCEMENT 866-2461
LOBBYIST REGISTRATION 866-2021
NOTARIES PUBLIC 866-2356
UNIFORM COMMERCIAL CODE 866-2543

July 10, 1981

Mr. Louis Nunez
Staff Director
U.S. Commission on Civil Rights
Washington, D.C. 20425

Dear Mr. Nunez:

Dale E. Noffsinger, Director of the Denver Election Commission, forwarded this office a copy of the interview with Laura DeHerrera, State Representative, held on November 20, 1980.

We object to the total inaccuracy of the statement: "Representative DeHerrera said that in Colorado bilingual material at the polls must be requested, but this was impractical because ...if the people don't know its there, how do they know to ask?"

Colorado has 34 counties covered pursuant to the language provision of the Voting Rights Act. Representative DeHerrera represents one of 65 legislative districts, a portion of Denver County. To the best of our knowledge, based on reports from Denver election judges, Representative DeHerrera remained within her district on general election day, primarily within one precinct. Our knowledge was gained from election judges who complained about her presence the entire day when she was not an election judge nor a watcher.

Since her comments referred to the state of Colorado, we believe it is our responsibility to present the facts, and yours to include them in any future record.

First, Mr. Noffsinger's comments concerning the availability of material on the table in polling places in Denver are true. An attorney from the U.S. Justice Department was an observer at several Denver polling places. In one polling place, an elderly election judge had placed the spanish language facsimile ballots in the wastebasket, thinking they were incomplete. Accompained by Assistant Attorney General, Stephen Kaplan, I responded to the observer's phone calls, visiting that precinct personally. The facsimiles were located and placed on the table; and I discussed this usage with both the supply judge, Josephine Thatch, and the bi-lingual judge in the precinct, Florence Padilla.

No other complaints were made by the Justice Department observer.

In reference to the other 33 counties and the availability of bilingual material, please be advised that county clerks met with the Secretary of State prior to the 1980 election to plan for meeting bilingual requirements. Colorado counties select their own voting equipment. Some use electronic (C.E.S. or Data Vote) equipment, others use mechanical voting machines (Shoup or A.V.M.) and a final group uses paper ballots.

Counties also vary greatly in size and concentration of population. Each county clerk made a commitment to careful and sensitive compliance with bilingual requirements. Some used facsimile ballots, others printed a combination english/spanish ballot. Facsimile ballots are posted, out on registration tables, etc. with english sample ballots. Obviously, bilingual ballots are available automatically on receipt of a ballot.

Voting materials (notices, voter signature cards, instructions) are printed in both spanish and english, as are all voter registration materials in use in the 34 covered counties. Since our office approves all forms and only one printer in Colorado prints forms, we are able to maintain a continuous monitoring of materials. No materials needed to be requested. They were in use, posted, or out in plain sight.

Colorado, like other western states, has a resident population of spanish sur-named citizens whose families, in many instances, were the original residents of our state. By preference, spanish is spoken in the home and family members are fluent in both spoken english and spanish. Many of these persons do not read spanish; therefore, county clerks and recorders place heavy emphasis on the recruitment of office personnel and election judges who speak both languages. In many counties most election judges are bilingual. In others, at least one judge per precinct speaks spanish.

Since reading spanish is a problem, oral assistance in voting will continue to be our first priority, but with full availability and use of required written materials, including ballots.

Yours very truly,

Betty M. Chronic

Betty M. Chronic
Director, Licesning and Elections

BMC/jc

Enclosure

cc: Mary Estill Buchanan
Dale Noffsinger
Marjorie A. Guipre
- Earl G. Sawyer

250

City and County of Denver, Colorado

After reviewing appropriate sections of Chapter 7 relating to Colorado, and in light of information provided by Dale E. Noffsinger, Director, City and County of Denver Election Commission and Betty M. Chronic, Director of Licensing and Elections for the Colorado Department of State, the Commission responds as follows:

The Commission notes that the statements of Representative De Herrera were part of an interview conducted with a minority community organization and minority individuals who are active in the community and knowledgeable as to the concerns and problems of language minorities. Representative De Herrera's statement reflected her opinion as to the need for more publicity regarding the availability of minority language assistance. Her general comments and opinions were not made or reported by the Commission in relation to any specific election, polling location or jurisdiction.

June 30, 1981

United States Commission on Civil Rights
Washington, D.C.. 20425

Attention: Louis Nunez

In reply to your letter dated June 22, 1981 concerning Cherokee Indian voting information. Cherokee County Election Board has tried to work with the tribe in registering American Natives. It has been published on several occasions that an interpreter will be placed at the Election Board, also each inspector is informed that the service is available and are to contact us if the service is needed. In the three precincts that are heavily populated with Cherokees, we have election workers that fluently speak the Cherokee language.

Cherokee County did employ seven interpreters when the Voters Act was brought into law. As the service was not needed, the Election Board voted to employ one interpreter to be placed in our office from seven a.m. to seven p.m. on election days, and due notice was given to each inspector. In the future we will publicize this more, hoping to reach those that are interested. With the help of the Cherokee Nation, this will be more effective. In reply to the question on why we do not interpret the questions on the ballots, I feel that it would be the responsibility of the Cherokee Tribe to advertise the questions in the Tribal Newspaper, both in Cherokee and English. Since the establishment of the Voters Act, to our knowledge we have never had to use the services of an interpreter.

Cherokee County Election Board Officals will work with the Cherokee Tribe in all areas of voter information to alleviate any problems that might arise in future elections. At this time we feel that the one centeralized interpreter can serve all voters who might need assistance.

Sincerely,

Bettye Burchette

Bettye Burchette
Secretary
Cherokee County Election Board

Enclosure

Bilingual Ballots Ok Sunday

By United Press International

Dozens of bilingual Oklahoma Indians - who will probably not even answer one telephone call - have been placed on standby duty at county election boards across the state in anticipation of next week's general election.

As a result of the federal Voters Rights Act of 1975, local and state elections officials are required to provide either bilingual ballots or interpreters in areas where at least 50 percent of the population is Spanish-speaking, Asian American, Alaskan natives or American Indians.

In Oklahoma, with at least 15,000 Indians from 30 federally recognized tribes, 23 counties - mostly in eastern and southcentral Oklahoma - are forced to hire interpreters and pay them a minimum fee of $17.

"Since the law was implemented, we have never had one for an interpreter," Lip Stratton, of the Oklahoma Election Board, said. "They have been available but there has never been a request for one. It's an absurd situation."

Indian leaders say the law benefits many Oklahoma Indians, most of whom read, write and understand English as well as the lawmakers themselves.

County of
FRESNO

Galen Larson,
Registrar of Voters

DATE: July 15, 1981

MEMORANDUM

TO: UNITED STATES COMMISSION ON CIVIL RIGHTS
ATTN: CAROLINE BLIETNER OR MICHAIL GOLDSTEIN

FROM: GALEN LARSON, FRESNO COUNTY CLERK

RE: VOTING RIGHTS ACT

Please find enclosed our response to your letter dated June 22, 1981, which we received June 29, 1981.

If you have questions call (209) 488-3246.

By Norma Logan
Norma Logan
Elections Manager

GL:nl:rh

Enclosure

1234 "L" Street/Fresno, California 93721/(209) 488-3246
Equal Employment Opportunity – Affirmative Action – Handicap Employer

RESPONSE TO LETTER FROM U.S. COMMISSION ON CIVIL RIGHTS
BY FRESNO COUNTY CLERK, ELECTIONS DIVISION

July 15, 1981

From 1976 when the Voting Rights Act requirements were put into effect, until 1978, we attempted to place a bilingual election officer in each precinct. We recruited by Calling voters with Spanish surnames from the voters indexes, Calling bilingual people known to us personally, asking election officers for referrals, contacting Mexican-American organizations, putting announcements on both Spanish and English language radio and TV, and in newspapers.

In 1978 a representative of the Calif. Sec. of State's office compiled a list of precincts requiring bilingual election officers. This identification of bilingual precincts enabled us to be more effective in placing the bilingual officers that we had recruited where they were needed. Great effort is made to place bilingual officers in these precincts.

Attached is a report for the November 4, 1980 election of bilingual precinct officer placement. As you can see, of the 25 bilingual precincts not filled when appointments were made, 12 were filled by election time, and of the 35 bilingual election officer dropouts, 19 were filled by election day. The others were not filled due to the continuing difficulty in recruitment, and time and staff limitations.

Note that there were many non-bilingual precincts that had bilingual election officers. We do place bilingual election officers out of their home areas in order to fill needs, but if there is a transportation or distance problem, or the election officer would just rather work near her own home, we appoint her there.

Also note that some precincts have 2, 3, and 4 bilingual election officers. We feel that these last two factors show appropriate community represenation.

In 1977, Fresno County developed a Voter Outreach program. With this group we have made a concerted effort in the area of registration, voter education and employment of minorities for precinct boards. We have representatives in the community every day who are working to reach our goals. They are in frequent contact with the bilingual radio and TV stations, and have made many presentations on radio and TV, and at schools and organizations.

ELECTION OFFICER

DROPOUT REPORT FOR NOVEMBER 4, 1980

	Bilingual	Inspectors	Other	Total
Not placed before appointments were sent	25	14	67	106
Dropouts between time appointments were sent & 11-3-80	24	45	171	240
Dropouts 11-3-80, the day before the Election.	3	2	22	27
Dropouts on Elections Day	8	1	7	16
Total	60	62	267	389

255

There were 516 precincts with 4 Election Officers each.

256

BILINGUAL ELECTION OFFICER REPORT 11-4-80

Total Precincts - 516

Bilingual Precincts - 165

Bilingual precincts having bilingual election officers - 136
(Using a total of 178 bilingual election officers)

Bilingual precincts having no bilingual election officers - 29
(Bilingual election officers never appointed - 13)
(Bilingual election officers appointed & dropped out - 16)

Non-bilingual precincts having bilingual election officers - 67
(Using a total of 76 bilingual election officers)

Total number of bilingual election officers working - 254

Office of the Secretary of State
March Fong Eu

Executive Office
1230 J Street
Sacramento, California 95814

(916) 445-6371

July 1, 1981

Mr. Louis Nunez, Staff Director
United States Commission
on Civil Rights
Washington, D.C. 20425

Re: Answer to Report dated June 22, 1981 (section 102(e) and Rules and Regulations section 702.18)

Dear Mr. Nunez:

Thank you for the opportunity to respond to certain testimony recently collected by the Commission in connection with its study of the Voting Rights Act. I am pleased to answer as follows:

(1) State Ballot Pamphlet

California is one of the few states which provides voters with detailed information concerning measures to be presented to the electorate prior to elections. The pamphlet is required to contain a title and summary for each state measure, a complete copy of each state measure, the text of the provisions to be repealed or revised, if any, a copy of the arguments and rebuttals for and against each measure, an analysis of each state measure, and such other materials designed to make the ballot pamphlet easier to understand or more useful for the average voter.

The required analysis is prepared by the Legislative Analyst and must "be written in clear and concise terms which will easily be understood by the average voter, and shall avoid the use of technical terms wherever possible." Government Code section 88003. A copy of the applicable law is marked as Exhibit "A" and is attached hereto.

A copy of the pamphlet is sent to every household in California wherein a registered voter resides and in some counties to every registered voter. In those counties covered by the minority language provisions of the Voting Rights Act of 1965 as amended in 1975, a person who has requested that he or she receive a translated version of the pamphlet is sent an appropriate version (Spanish or Chinese -- whichever is appropriate).

A voter indicates a desire to receive translated elections materials in California by indicating such a desire at the time of registration in the space provided for such information (see Exhibit "B"), by returning a bilingual postage prepaid postcard included in the English version of the pamphlet (see Exhibit "C"), or otherwise requesting the appropriate official to provide such material. The availability of translated material is prominently indicated in the foreign language on the cover of the pamphlet (see Exhibit "D").

Mr. Der is apparently unfamiliar with the conduct of elections in California. If a voter wishes to receive translated elections materials, the voter presumably would have indicated such desire at the time of registration. If the voter failed to do so but nevertheless wanted to receive it, the voter would be able to note the availability of the material by glancing at the voters pamphlet cover, which contains bilingual information to that effect. In this context, the statement "Why would someone who doesn't read English even bother to flip through it?" is nonsensical.

I share the concern of Mr. Trasvina and Ms. Aguirre with regard to the comprehensibility of much of the ballot pamphlet material. Indeed, parts of it are difficult to understand simply because the law itself is difficult to comprehend and explain on occasion. Yet, the Legislative Analyst does attempt to follow the dictates of the law which requires that his analysis be written so as to be understood by the average voter, and the arguments for and against are typically written by lay people in common parlance.

I'm afraid that the alternative to the sometimes legalistic ballot pamphlet material may be to provide no information at all. That, in my opinion, would not be desirable. In any case, this problem has nothing whatsoever to do with the Voting Rights Act.

(2) Elections Code section 304

California law does, indeed, mandate my office to promulgate regulations requiring counties to design and implement outreach plans. I have done so (see Exhibit "E"). The state currently is spending approximately $200,000 annually to reimburse counties for implementation costs.

The extent to which the City and County of San Francisco should engage in voter outreach activities beyond the

minimum required by state regulations has been the subject of frequent dispute over the past several years. Chinese for Affirmative Action and other community groups have worked with state and local officials frequently to maximize voter outreach in San Francisco. Mr. Der apparently feels that these efforts are insufficient. The current Registrar of Voters is sensitive to the criticism of Mr. Der and others, including this office, and is making significant efforts to expand voter outreach programs within the confines of staff and budgetary limitations.

In any case, it should be noted that Elections Code section 304 is a state law and that its implementation has nothing whatsoever to do with the Voting Rights Act.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California on July 2, 1981.

March Fong Eu

MARCH FONG EU

Chapter 8. Ballot Pamphlet. § 88000 - 88007

§ 88000. Responsibility.
§ 88001. Contents.
§ 88002. Format.
§ 88003. Duties of Legislative Analyst.
§ 88004. Manner, Form of Printing Measures.
§ 88005. Printing Specifications.
§ 88005.5. Duties of Legislative Counsel.
§ 88006. Public Examination of Pamphlet.
§ 88007. Amendment of Chapter by Legislature.

88000. Responsibility. There shall be a state ballot pamphlet which shall be prepared by the Secretary of State.

88001. Contents. The ballot pamphlet shall contain:

(a) A complete copy of each state measure;

(b) A copy of the specific constitutional or statutory provision, if any, which would be repealed or revised by each state measure;

(c) A copy of the arguments and rebuttals for and against each state

Exhibit 26A

measure;

(d) A copy of the analysis of each state measure;

(e) Tables of contents, indexes, art work, graphics and other materials which the Secretary of State determines will make the ballot pamphlet easier to understand or more useful for the average voter;

(f) A notice, conspicuously printed on the cover of the ballot pamphlet, indicating that additional copies of the ballot pamphlet will be mailed by the county clerk upon request.

History: Amended by Stats. 1977, Ch. 520, effective January 1, 1978.

88002. Format. The ballot pamphlet shall contain as to each state measure to be voted upon, the following in the order set forth in this section:

(a) Upon the top portion of the first page and not exceeding one-third of the page shall appear:

(i) The identification of the measure by number and title.

(ii) The official summary prepared by the Attorney General.

(iii) The total number of votes cast for and against the measure in both the State Senate and Assembly if the measure was passed by the Legislature.

(b) Upon the lower portion of the first left page and upon the top half of the right page, if necessary, shall appear the analysis prepared by the legislative analyst.

(c) If arguments for and against the measure have been submitted, then the text of the measure shall appear on the right page facing the analysis. If the text does not fit on this page, it shall be continued in the back of the pamphlet. Arguments for and against the measure shall be placed on the next left and right pages respectively. The rebuttals shall be placed immediately below the arguments.

(d) If no argument against the measure has been submitted, the argument for the measure shall appear on the right page facing the analysis. The text of the measure shall be printed in the back of the pamphlet.

(e) The text of the measure shall contain the provisions of the proposed measure and the existing provisions of law repealed or revised by the measure. The provisions of the proposed measure differing from the existing provisions of law affected shall be distinguished in print, so as to facilitate comparison.

(f) The following statement shall be printed at the bottom of each page where arguments appear: "Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency."

88003. Duties of Legislative Analyst. The Legislative Analyst shall prepare an impartial analysis of the measure describing the measure and including a fiscal analysis of the measure showing the amount of any increase or decrease in revenue or cost to state or local government. Any estimate of increased cost to local governments shall be set out in boldface

print in the ballot pamphlet. The analysis shall be written in clear and concise terms which will easily be understood by the average voter, and shall avoid the use of technical terms wherever possible. The analysis may contain background information, including the effect of the measure on existing law and the effect of enacted legislation which will become effective if the measure is adopted, and shall generally set forth in an impartial manner the information which the average voter needs to understand the measure adequately. The Legislative Analyst may contract with professional writers, educational specialists or other persons for assistance in writing an analysis that fulfills the requirements of this section, including the requirement that the analysis be written so that it will be easily understood by the average voter. The Legislative Analyst may also request the assistance of any state department, agency, or official in preparing his analysis. The title of the measure which appears on the ballot shall be amended to contain a summary of the Legislative Analyst's estimate of the net state and local government financial impact.

History: Amended by Stats. 1975, Ch. 486, effective September 2, 1975.

88004. Manner, Form of Printing Measures. Measures shall be printed in the ballot pamphlet, so far as possible, in the same order, manner and form in which they are designated upon the ballot.

88005. Printing Specifications. The ballot pamphlet shall be printed according to the following specifications:

(a) The pages of the pamphlet shall be not smaller than 8½ x 11 inches in size;

(b) It shall be printed in clear readable type, no less than 10-point, except that the text of any measure may be set forth in 8-point type;

(c) It shall be printed on a quality and weight of paper which in the judgment of the Secretary of State best serves the voters;

(d) The pamphlet shall contain a certificate of correctness by the Secretary of State.

88005.5. Duties of Legislative Counsel. The Legislative Counsel shall prepare and proofread the texts of all measures and the provisions which are repealed or revised.

88006. Public Examination of Pamphlet. Not less than twenty days before he submits the copy for the ballot pamphlet to the state printer, the Secretary of State shall make such copy available for public examination. Any voter may seek a writ of mandate requiring any such copy to be amended or deleted from the ballot pamphlet. A peremptory writ of mandate shall issue only upon clear and convincing proof that the copy in question is false, misleading or inconsistent with the requirements of this chapter or the Elections Code, and that issuance of the writ will not substantially interfere with the printing and distribution of the ballot pamphlet as required by law. Venue for a proceeding under this section shall be exclusively in Sacramento County. The Secretary of State shall be named as the respondent and the state printer and the person or official

who authored the copy in question shall be named as real parties in interest. If the proceeding is initiated by the Secretary of State, the state printer shall be named as the respondent.

88007. Amendment of Chapter by Legislature. Notwithstanding the provisions of Section 81012, the Legislature may without restriction amend this chapter to add to the ballot pamphlet information regarding candidates or any other information.

19055. Voter Registration Card.

(a) Postal Forms.

(1) Affidavit of Registration Portion.

PRINT IN INK—ESCRIBA EN LETRA DE MOLDE EN TINTA

STATE OF—ESTADO DE CALIFORNIA
COUNTY OF—CONDADO DE SANTA CLARA

AFFIDAVIT OF REGISTRATION—DECLARACIÓN JURADA DE EMPADRONAMIENTO

1 Optional - Opcional— ☐ Mr/Sr ☐ Mrs/Sra ☐ Miss/Srta ☐ Ms
Name - Nombre (first - nombre) (middle - segundo) (last - apellido)

2 Residence - Domicilio (No.) (Street - Calle) (Apt. No. - Núm. del Apt.)

3 City - Ciudad | 4 Zip Code - Zona Postal

5 If no street address, describe location of residence: (cross streets, route, box, section, range, township, etc. - Si la calle no tiene núm. describa la localidad: (Calles que atraviesan, etc.)

6 Mailing Address (if different) - Dirección Postal (si diferente) (Rte or Box)

City - Ciudad Zip Code - Zona Postal

7 Political Party - Partido Político (Check One - Indique uno)
☐ American Independent ☐ Democratic ☐ Peace and Freedom
☐ Republican ☐ Decline to State - Se niega a declarar
☐ Other - Otro _____

8 Date of Birth
Fecha de nacimiento
mo - mes / day - día / yr - año

9 State or country of birth
Estado o país de nacimiento

10 Occupation - Profesión u oficio

11 Telephone (Optional)
Teléfono (Opcional)

Social Security No. (Optional)
Núm. de seguro social (Opcional)

12 ☐ I prefer election materials in English
☐ Prefiero materiales electorales en español

WARNING: Perjury is punishable by imprisonment in State prison of not less than 1 nor more than 14 yrs. § 126 Penal Code, 2015.5 Civil Proc.

I am a citizen of the United States and will be at least 18 years of age at the time of the next election. I am not imprisoned or on parole for the conviction of a felony which disqualifies me from voting. I certify under penalty of perjury that the information on this affidavit is true and correct.

AVISO - El juramento en falso es castigable con encarcelamiento en la prisión del estado por no menos de uno y no más de catorce años. § 126 Penal Code, 2015.5 Civ. Proc.

Soy ciudadano de los Estados Unidos y tendré por lo menos 18 años de edad para la próxima elección. No estoy preso o bajo el regimen de libertad provisional por un crimen que me prive del derecho de votar. Juro bajo pena de falso juramento que la información en esta Declaración Jurada es verdadera y correcta.

13 Signature - Firma

Date - Fecha Subscribed in County of - Firmado en Condado de

14 George A. Mann, Registrar of Voters - Recorder
Deputy—
Empadronador

Date - Fecha Acct. No. Núm. de Cuenta 15

PRIOR REGISTRATION PORTION: PORCIÓN DE PRE-EMPADRONAMIENTO:
Are you currently registered to vote?
¿Esta ud. empadronado para votar actualmente? ☐ Yes—Sí ☐ No
(If YES, fill in below — Si afirmativo, rellene los espacios abajo)

NAME - NOMBRE

Former Address - Dirección Anterior:

City - Ciudad County - Condado

Political Party - Partido Político A 9 9 9 9 9 9

Exhibit B

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NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL

FIRST CLASS PERMIT NO. 5037 SACRAMENTO, CA

POSTAGE WILL BE PAID BY

SECRETARY OF STATE
P.O. BOX 726
SACRAMENTO, CALIFORNIA 95805

ELECTIONS DIVISION

DO NOT USE THIS CARD FOR ABSENT VOTER BALLOT REQUEST.
USE TO REQUEST SPANISH PAMPHLETS ONLY.

☐ Favor de enviarme un folleto en español y en el futuro todos los materiales electorales en español.

Print in ink — *Escriba en letra de molde en tinta*

Name — *Nombre*	
Address — *Residencia*	
City — *Ciudad*	State — *Estado*
	Zip Code — *Zona Postal*

Signature — *Firma*

NOTE: If this card cannot be mailed by May 23, 1980, contact your county clerk or registrar of voters for a translated pamphlet.

NOTICIA: *Si no se puede mandar esta tarjeta a lo menos el día 23 de mayo de 1980, sírvase llamar al secretario del condado o al registrante de votantes para recibir un folleto traducido.*

Exhibit C

California Ballot Pamphlet

General Election
November 4, 1980

Compiled by March Fong Eu
Secretary of State

Analyses by William G. Hamm
Legislative Analyst

Exhibit D

AVISO

Una traducción al español de este folleto de la balota puede obtenerse si completa y nos envía la tarjeta con porte pagado que encontrará entre las páginas 40 y 41. Escriba su nombre y dirección en la tarjeta en LETRA DE MOLDE y regrésela a más tardar el 23 de octubre de 1980.

19059. Languages.

The forms prescribed in Section 19055 shall be printed in the following languages:

(a) Monolingual English versions

(b) Bilingual versions

(1) English-Spanish

(2) English-Chinese

Article 3. County Programs to Identify and Register Qualified Electors

20000. General.

All counties shall design and implement programs intended to identify qualified electors who are not registered voters, and to register such persons to vote, hereinafter referred to as outreach programs.

NOTE: Authority cited for Article 3 (Sections 20000-20006): Section 202, Elections Code. Reference: Section 202, Elections Code.

20001. Minimum Requirements.

As a minimum, each county's outreach program shall contain the following components which shall be described in an outreach program plan:

(a) Consultation. Each program shall include systematic effort by the clerk to consult on a continuing basis all persons who exhibit interest and special knowledge in any outreach methods contemplated by the clerk. This effort shall include, but not be limited to, a gathering of source lists of persons whose interest, knowledge, or experience suggests the potential for meaningful contribution to increased voter registrations in the county.

(b) Publicity. Each program shall make specific provision for publicity on all phases of voter registration, including the training and deputizing of registrars.

(c) Focus; Balance. Each program shall establish priorities for the direction of its outreach efforts. These priorities shall reflect the clerk's assessment as to which specific outreach methods will be the most cost-effective in the county. Each plan shall be reasonably balanced in the allocation of outreach efforts and resources among the major pools of unregistered voters.

(d) Budget. Each program shall include a budget with sections for personnel, equipment and materials for each outreach effort proposed.

(e) Schedule. Each program shall contain a schedule of critical dates and deadlines associated with each outreach effort proposed. This schedule shall be supported by contractual and voluntary commitments, if any, from those responsible for providing products or services to meet these dates.

(f) Solicitation of Local Assistance. Each program shall provide for the solicitation of assistance from local offices of all levels of government and of private entities in providing the incidental use of their premises and/or personnel for the purpose of outreach. The offices and entities whose assistance is solicited shall include those which, in the opinion of the county clerk, come into frequent contact with unregistered electors who would be least likely to register under county registration practices in effect prior to July 1, 1976.

(g) Distribution Controls. Each program shall establish orderly limits upon bulk distributions of registration affidavit forms. Such controls should include, but not be limited to, record keeping, training, and contingency plans for form allocation in the event that supplies become depleted.

Exbibit E
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All requests for more than 50 registration forms shall be accompanied by a brief statement of distribution plans, which shall be a necessary condition to issuance of the voter registration cards. This statement shall designate the name and address of the person or persons proposing such a distribution plan. This statement shall contain declarations executed under penalty of perjury that reasonable steps will be taken to insure that:

(1) The person or persons distributing such cards to potential registrants will not neglect or refuse to give a voter registration card to any elector requesting one for the purpose of registering to vote; and

(2) The voter registration cards issued will not be altered, defaced, or changed in any way, other than by the insertion of a mailing address and the affixing of postage, if mailed, or as otherwise specifically authorized by the Secretary of State, prior to distribution to prospective registrants and that the affidavit portion of the voter registration cards will not be marked, stamped, or partially or fully completed by anyone other than an elector attempting to register to vote or by another person assisting such elector after being requested by such elector to assist in completing the affidavit.

A copy of all statements for requests exceeding 2000 forms shall be sent to the Secretary of State.

20002. Program Emphasis.

Each outreach program shall stress the solicitation of voter registrations by persons whose daily activities place them in frequent contact with potential registrants.

Selection of outreach methods shall consider maximum cost-effectiveness in view of the population of unregistered electors intended to be reached. Selection of methodology shall consider not only the level of effort expended, but also the likelihood of actual registrations obtained thereby.

Nothing in these regulations shall be construed to limit the use of deputy registrars of voters, including bilingual registrars, pursuant to Sections 302 and 303 of the Elections Code. Outreach programs adopted pursuant to these regulations shall provide for the continued use of deputy registrars when a population of unregistered electors requires personal assistance in registration and the continued use of deputy registrars is therefore reasonably appropriate.

Each county shall provide for the solicitation of registrations by personnel of state agencies, to the extent that the state agency has made its personnel available for an outreach program.

20003. Submission of Plan for Outreach Program.

No later than 20 days after the effective date of this Article, each county shall submit to the Secretary of State a plan describing its proposed outreach program. Each program shall be deemed to have met the minimum requirements if the Secretary of State has not interposed an objection within 21 days after such program has been submitted.

20004. Evaluation.

Annually in July, the Secretary of State will evaluate the county's program on the basis of two criteria:

(a) adherence to the adopted plan for the meeting of minimum requirements.

(b) effectiveness in terms of increase in number of registered voters over statistical/historical expectations.

20005. Cost/Savings Comparison Reports.

On or before August 31 of each year, the county shall report to the Secretary of State its actual net cost of complying with Chapter 704, Statutes of 1975, as amended, including any program adopted pursuant to Section 304 of the Elections Code, for the immediately preceding fiscal year along with an estimated net cost for the forthcoming fiscal year.

For the purposes of these regulations, net cost is defined as total cost as offset by any savings which may accrue as the result of Chapter 704, Statutes 1975, as amended.

For the purposes of these regulations, a fiscal year is defined as the period of time from July 1 of the calendar year through June 30 of the following calendar year.

NOTE: Authority cited: Statutes 1975, Chapter 1119, Section 4; Section 12172, Government Code. Reference: Statutes 1975, Chapter 704, Section 91.

20006. Reimbursement of Net Costs.

Pursuant to Section 91 of Chapter 704, Statutes of 1975, any demonstrable net costs shall be reimbursed through the normal budget process.

Article 4. Overseas Citizens Registration and Voting

20050. Overseas Citizen Affidavit of Registration.

The affidavit of registration for overseas citizens shall be in substantially the following form:

San Francisco, California

After reviewing appropriate sections of Chapter 7 relating to California, and in light of information provided by March Fong Eu, Secretary of State, the Commission responds as follows:

In reviewing Exhibit D to Ms. Eu's letter, the Commission found that the notice concerning the availability of translated material on the California ballot pamphlet for the November 4, 1980 election was only translated in Spanish. A telephone interview was held with Mr. Der on August 7, 1981 to get further clarification of his statement in light of the information furnished by Ms. Eu. Mr. Der stated that the California ballot pamphlet for San Francisco had a Chinese translation on the cover noting that if the voter wanted to receive translated material they needed to send in a card that was in the middle of the English material. He said that his statement referred to the fact that a non-English speaking person would be overwhelmed by the amount of English material and would not bother to flip through it to find the card.

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Voting Problems Discussed in Report

U.S. Commission on Civil Rights
The Voting Rights Act: Unfulfilled Goals
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